

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES)

H. J. HEINZ COMPANY (a Corporation),
Appellant,

vs.

MAX M. COHN,
Appellee.

VOLUME I.
(Pages 1 to 304, Inclusive.)

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

FILED

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*In the United States Circuit Court of Appeals, Ninth
Circuit.*

No. —.

H. J. HEINZ COMPANY, a Corporation,
Appellant,

vs.

MAX M. COHN,
Appellee.

Stipulation Under Rule 23.

IT IS HEREBY STIPULATED AND
AGREED by and between counsel for the above parties that in printing the transcript of the record on the appeal in the above-entitled cause, the Clerk may omit therefrom the following patents:

United States Patent No. 369,059, August 30, 1887,
Jacobson.

United States Patent No. 752,537, February 16, 1904,
Eneas.

British Patent No. 1,119, of 1861, to Johnson.

“ “ “ 5,823, of 1884, to Peace.

“ “ “ 2,339, of 1894, to Pescheux et al.

“ “ “ 7,955, of 1895, to Watts.

The Clerk is hereby requested, in accordance with the above stipulation, to omit the above specified patents in printing the transcript of the record in the above-entitled case.

THOMAS A. BANNING,
For Appellant.

CHAS. E. TOWNSEND,
For Appellee.

[Endorsed]: No. 2195. U. S. Circuit Court of Appeals, Ninth Circuit. H. J. Heinz Company, Appellant, vs. Max M. Cohn, Appellee. Stipulation Under Rule 23. Filed Nov. 15, 1912. F. D. Monckton, Clerk.

*In the Circuit Court of the United States for the
Northern District of California, Ninth Circuit.*

IN EQUITY—ON PATENTS Nos. 824,908 and
835,850.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY, a Corporation,

Respondent.

Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of the United States for the Northern District of California, Ninth Circuit, Sitting in Chancery:

Max M. Cohn, a citizen of the United States, a resident of the City and County of San Francisco, State of California, complainant, brings this his bill of complaint against the H. J. Heinz Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and having an office and a regular and established place of business in the City and County of San Francisco, State of California, aforesaid, and a managing agent there conducting the same, in the Northern District of California, where the acts of infringement herein

complained of have been committed; and thereupon your orator complains and says:

1. That at all the times hereinafter mentioned the complainant, Max M. Cohn, was and is a citizen of the United States, and a resident of the City and County of San Francisco, in said [1*] State of California, and that at all said times the H. J. Heinz Company, respondent, was and still is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and having a regular and established place of business at the City and County of San Francisco, State of California, and a managing agent there conducting the same, in the Northern District of California.

2. That heretofore, to wit, prior to the 8th day of November, 1904, Max M. Cohn, the complainant, a citizen of the United States, and resident of San Francisco, was the original, first and sole inventor of a certain new and useful invention entitled "Envelope," having an unpunctured face of relatively opaque stock, said envelope-face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock, a more particular description of which envelope will be found in the letters patent issued therefor by the Government of the United States, and hereinafter referred to, and to which special reference is hereby made.

*Page-number appearing at foot of page of original certified Record.

3. That the said envelope was a new and useful invention not known to, or used by, others in this country, nor patented nor described in any printed publication in this or any foreign country before the invention and discovery thereof by said Max M. Cohn, or more than two years before his application for a patent therefor; and not in public use or on sale for more than two years prior to his application for a patent therefor, as hereinafter alleged; nor had the same been abandoned by him prior to his said application; nor had the said Max M. Cohn, or his legal representatives or assigns made or filed any [2] application for a patent in any foreign country for said invention more than twelve months prior to his said application therefor in this country.

4. And your orator further shows unto your Honors that the said Max M. Cohn, being as afore-said the original, first and sole inventor of said envelope, did, on the 8th day of November, 1904, duly and regularly make and file in the Patent Office of the United States an application in writing praying for the granting and issuance of letters patent of the United States for the same.

5. And your orator further shows unto your Honors that after proceedings duly and regularly had and taken in said application, to wit, on November 13, 1906, letters patent of the United States bearing date on that day, and numbered 835,850, were granted, issued and delivered by the Government of the United States to the said Max M. Cohn, whereby there was granted to him, his heirs or assigns, for the full term of seventeen years from the 13th day

of November, 1906, the sole and exclusive right to make, use and vend the said invention throughout the United States of America and the territories thereof.

6. And your orator further shows unto your Honors that said letters patent were issued in due form of law in the name of the United States of America, under the seal of the Patent Office of the United States, and were signed by the Commissioner of Patents of the United States, and prior to the issuance thereof all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions, which letters patent are ready to be produced in court by your orator, or a duly authenticated copy thereof, and profert is hereby made of said letters patent. [3]

7. That heretofore, to wit, prior to the 17th day of January, 1905, Max M. Cohn, complainant, a citizen of the United States, and a resident of the City and County of San Francisco, State of California, was the original, first and sole inventor of certain other new and useful inventions entitled "Envelope," having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition of said window and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window, a more particular description of which will be found

in the letters patent issued therefor by the Government of the United States, and hereinafter referred to, and to which special reference is hereby made.

8. That the said envelope was a new and useful invention not known to, or used by, others in this country, nor patented nor described in any printed publication in this or any foreign country before the invention or discovery thereof by said Max M. Cohn, or more than two years before his application for a patent therefor; and at the time of his application for a patent therefor, as hereinafter alleged, the same had not been in public use nor on sale in the United States for more than two years, nor had the same been abandoned; nor had said Max M. Cohn or his legal representatives or assigns made or filed any application for a patent in any foreign country for said invention more than twelve months prior to his said application therefor in this country.

9. And your orator further shows that the said Max M. Cohn, being as aforesaid, the original, first and sole inventor, [4] of said envelope, did, on the 17th day of January, 1905, duly and regularly make and file in the Patent Office of the United States an application in writing praying for the granting and issuance of letters patent of the United States for the same.

10. And your orator further shows unto your Honors that after proceedings duly had and taken in the matter of said application, that thereafter, to wit, on the 3d day of July, 1906, letters patent of the United States bearing date on that day and numbered 824,908, were granted, issued and delivered by

the Government of the United States to the said Max M. Cohn, whereby there were granted to him, his heirs or assigns, for the full term of seventeen years from the 3d day of July, 1906, the sole and exclusive right to make, use and vend the said invention throughout the United States of America, and the territories thereof.

11. And your orator further shows unto your Honors that said letters patent were issued in due form of law in the name of the United States of America, under the seal of the Patent Office of the United States, and were signed by the Commissioner of Patents of the United States, and prior to the issuance thereof all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions, which letters patent are ready to be produced in court by your orator, or a duly authenticated copy thereof, and profert is hereby made of said letters patent.

12. And your orator further shows that ever since the issuance of said patents numbered 835,850 and 824,908 the said Max M. Cohn was and is the sole owner of all the right, title and interest in and to said inventions and said several letters [5] patent therefor, aforesaid, together with all claims and demands both in law and in equity for damages and profits accrued or to accrue on account of infringements of said several letters patent.

13. And your orator further shows that said invention, and the inventions described and claimed in each of said patents, are capable and are designed

for conjoint use in one and the same envelope, and that they each are, and have been ever since the issuance of said patents, conjointly used by the complainant and respondent. And the complainant has never acquiesced in any invasions of his rights therein, and upon all of his envelopes made and sold by him there has been stamped and printed, or caused to be stamped and printed thereon, the word "Patented," together with the dates of said patents. That the said inventions protected by said several patents are of great value, and, but for the infringement hereinafter complained of, your orator would be still in the undisturbed possession, use and enjoyment of the exclusive rights, powers and privileges granted under said patents. That the said complainant has been to a great expense in perfecting said invention and making it available for public use and benefit, and in introducing said patented device to the public and in building up a market therefor; that the superior utility of the said patented device has become generally recognized; that the users of said patented device have universally recognized the utility of said device, and the public has generally acquiesced in the validity of complainant's said patents.

14. And your orator further shows unto your Honors as he is informed and believes, that the said respondent H. J. Heinz Company, well knowing all the facts herein set forth and [6] the rights secured to your orator aforesaid, intending to injure your orator and to deprive him of the benefits and profits which might and otherwise would accrue unto him for such inventions after the issuance of said

several letters patent, and within six years last past, and before the commencement of this suit, and within the Northern District of California, and within the jurisdiction of this Court and elsewhere in the United States, and against the will of your orator, and in violation of his rights and in infringement of said several letters patent and all of the claims thereof, has conjointly used and is now conjointly using the inventions and improvements set forth and claimed in each of the said letters patent by using envelopes which in all parts thereof are substantially the same in construction and mode of operation as the envelopes in said letters patent mentioned and claimed, and threatens to continue said unlawful use; that respondent has made conjoint use of said patented inventions in a single envelope, and still continues to do so in defiance of your orator's rights and to his irreparable loss and injury, and that the acts and doings of said respondent are contrary to equity and good conscience, and to the manifest wrong and injury of your orator; that said respondent threatens and declares it will continue to so infringe upon said patents unless restrained by the process of the Court.

15. That by reason of the premises and the threatened unlawful acts of the respondent aforesaid, your orator has suffered great and irreparable injury and damage, the exact amount of which is unknown, and can be ascertained only by an accounting, and the respondent has realized, as your orator is informed and believes, large gains, profits and advantages from and by reason of said threatened infringement, the

exact amount [7] of which is likewise unknown to your orator and can be ascertained only by an accounting.

That for the wrongs and injuries herein complained of your orator has no plain, speedy or adequate remedy at law, and forasmuch as your orator is without remedy save in a court of equity where matters of this kind are cognizable and relievable.

TO THE END, therefore, that the said respondent may, if it can, show why your orator cannot have the relief herein prayed, and may according to the best and utmost of the knowledge, information, recollection and belief of its officers, but not under oath (an answer under oath being hereby waived) full, true, direct and perfect answer make to all and singular the matter and things hereinabove charged, your orator prays that the said respondent be enjoined and restrained both provisionally and perpetually by an injunction of this court from using said envelope and infringing upon said letters patent, and be decreed to account for and pay over to your orator the gains, profits and advantages realized by it, and in addition thereto the damages sustained by your orator from and by reason of the infringement, actual and threatened, together with costs of court.

May it please your Honors to grant unto your orator forthwith upon the filing of this bill of complaint a writ of injunction issued out of and under the seal of this court provisionally and until the final hearing, enjoining and restraining the said respondent, its agent, servants, attorneys, workmen and employees, and each of them, from making, using or

selling any envelopes containing and embracing the invention claimed and patented in and by said letters patent, and that upon the final hearing of this cause said provisional injunction be made perpetual, and that your orator have such other and further [8] relief as to your Honors may seem meet and in accordance with equity and good conscience.

May it please your Honors to grant unto your orator the writ of subpoena ad respondendum issued out of and under the seal of this court directed to the respondent H. J. Heinz Company, commanding it by a day certain and under a certain penalty fixed by law to be and appear before this Court, then and there to answer this bill of complaint and to stand by and abide by such further orders and decrees as to your Honors may seem meet in the premises.

MAX M. COHN,

CHAS. E. TOWNSEND,

Solicitors for Complainant.

CHAS. E. TOWNSEND,

Of Counsel.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Max M. Cohn, being duly sworn, deposes and says that he is the complainant in the within entitled action; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, that he believes it to be true.

MAX M. COHN.

Subscribed and sworn to before me this 28th day of July, 1910.

[Seal]

THOMAS S. BURNS,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed July 28, 1910. Southard Hoffman, Clerk. J. A. Schaertzer, Deputy Clerk. [9]

Subpoena ad Respondendum.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

IN EQUITY.

The President of the United States of America,
Greeting:

To H. J. HEINZ COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and having an office and a regular place of business in the City and County of San Francisco, State of California.

YOU ARE HEREBY COMMANDED, That you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in San Francisco, on the sixth day of September, A. D. 1910, to answer a Bill of Complaint exhibited against you in said court by Max M. Cohn, who is a citizen of the State of California and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, the Honorable JOHN M. HARLAN, Senior Associate Justice of the Supreme Court of the United States, this 28th day of July, in the year of our Lord one thousand nine hundred and ten and of our Independence the 135th.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to enter your appearance in the above suit, on or before the first Tuesday of September next, at the Clerk's Office of said Court, pursuant to said Bill; [10] otherwise the said Bill will be taken *pro confesso*.

SOUTHARD HOFFMAN,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

United States Marshal's Office,
Northern District of California.

I hereby certify that I received the within Subpoena in Equity on the 28th day of July, 1910, and personally served the same upon H. J. HEINZ COMPANY, a corporation, by handing to and leaving an attested copy hereof with N. J. Mitchell, general manager and managing agent in charge conducting the business of H. J. Heinz Co., at their regular established place of business in the City and County of San Francisco, in said District, on the 28th day of

July, 1910. Said service being made personally, and in the manner above stated under instructions from the within named plaintiff.

Dated at San Francisco, California, this 28th day of July, 1910.

C. T. ELLIOTT,
United States Marshal,
By T. F. Kiernan,
Office Deputy Marshal.

[Endorsed]: Filed Jul. 29, 1910. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.
[11]

[Answer of H. J. Heinz Company.]

*Circuit Court of the United States, Northern District
of California.*

IN EQUITY —No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

The answer of the defendant, the H. J. HINZ COMPANY, to the Bill of Complaint of Max M. Cohn, Complainant.

This defendant, now and at all times hereafter saving and reserving unto itself all and all manner of benefit, advantage and exception that may be had or taken to the many errors, insufficiencies and inaccuracies in the said bill of complaint contained, for

answer thereunto, or to so much and such parts thereof as this defendant is advised it may be necessary to make answer unto, answering says:

1. This defendant admits that the complainant, Max M. Cohn, is a citizen of the United States and a resident of the City and County of San Francisco, State of California, and that the defendant is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and having an office and a regular established place of business in the City and County of San Francisco, State of California, and a managing agent there conducting the same, in the Northern District of California, as alleged in the bill of complaint herein. [12]

2. This defendant further answering says that as to whether prior to the 8th day of November, 1904, the complainant was the inventor or discoverer of certain alleged new and useful inventions or improvements in envelopes, not known or used by others in this country before his invention or discovery thereof; and as to whether the same had not been patented or described in any foreign country before his invention or discovery thereof; and as to whether the same had not been in public use or on sale for more than two years prior to his application for letters patent therefor and not abandoned; and that as to whether on said 8th day of November, 1904, he made application for letters patent of the United States in accordance with the law and with the rules and regulations in the Patent Office in such cases made and provided; this defendant has no knowledge, except as derived from the bill of complaint

herein and except as hereinafter alleged, and so denies each and every of said matters and calls upon the complainant to make such proof thereof as it may deem necessary or desirable; though this defendant admits that on the 12th day of November, 1906, letters patent of the United States No. 835,850 were issued to the complainant, as in the said bill of complaint alleged.

3. This defendant further answering says that as to whether prior to the 17th day of January, 1905, the complainant was the inventor or discoverer of certain alleged new and useful inventions or improvements in envelopes, not known or used by others in this country before his invention or discovery thereof; and as to whether the same had not been patented or described in [13] any foreign country before his invention or discovery thereof; and as to whether the same had not been in public use or on sale for more than two years prior to his application for letters patent therefor and not abandoned; and that as to whether on said 17th day of January, 1905, he made application for letters patent of the United States in accordance with the law and with the rules and regulations in the Patent Office in such case made and provided; this defendant has no knowledge, except as derived from the bill of complaint herein and except as hereinafter alleged, and so denies each and every of said matters and calls upon the complainant to make such proof thereof as it may deem necessary or desirable; though this defendant admits that on the 3d day of July, 1906, letters patent of the United States No. 824,908 were issued to the complainant,

as in the said bill of complaint alleged.

4. This defendant further answering says that as to whether the said complainant was and is the sole owner of all the right, title and interest in and to said alleged inventions or improvements, and the said letters patent No. 835,850 and No. 824,908, together with all claims and demands in law or in equity for damages and profits accrued or to accrue on account of infringements of said letters patent; and as to whether the alleged inventions or improvements described and claimed in each of said letters patent are capable and are designed for conjoint use in one and the same envelope, and that they are or have been since the issuance of said letters patent conjointly used by the complainant or defendant; and as to whether the complainant has [14] never acquiesced in any invasion of his alleged rights under said letters patent, or either of them; and as to whether all or any of his envelopes made and sold by him have been stamped and printed, or otherwise marked, with the word "Patented," or other words to the same purport; and as to whether the said alleged inventions or improvements described and claimed in said letters patent, or either of them, are of great or any value; or as to whether the complainant has been to a great or any expense in perfecting said alleged inventions or improvements and making them available for public use and benefit, or in introducing said inventions or improvements to the public and building up a market therefor; or as to whether the utility of the said alleged inventions or improvements has become generally recognized so that the users thereof

and the public generally have acquiesced in the validity of said letters patent; this defendant has no knowledge, except as derived from the bill of complaint herein, and so denies each and every of said matters and calls upon the complainant to make such proof thereof as it may deem necessary or desirable.

5. This defendant further answering denies that it has been duly or otherwise notified of the date and grant of said letters patent No. 835,850 and No. 824,908 and of the complainant's alleged rights thereunder; and denies that it has, without the license of the complainant, and in violation of his rights under said letters patent, with intent to injure the complainant, or to otherwise deprive him of the alleged benefits and profits which he alleges might and otherwise would have accrued to him [15] for such alleged inventions or improvements, before the commencement of this suit and within the Northern District of California, or elsewhere in the United States, and in violation of the complainant's rights, and in infringement of said letter patent and of all or any of the claims thereof, used and is now using conjointly or otherwise, the alleged inventions and improvements set forth and claimed in said letters patent, or either of them, by using envelopes which in all or any part thereof are substantially like the same in construction and mode of operation as the envelopes described and claimed in said letters patent, or either of them; and denies that it has threatened or is threatening to continue any unlawful use thereof; and denies that it has made conjoint or other use of said alleged patented inventions or improvements in

a single envelope, and that it continues so to do in defiance or violation of the complainant's rights under said letters patent, or to his irreparable or other loss and injury; and denies that its acts and doings are contrary to equity and good conscience and to the wrong and injury of the complainant, and that it threatens and declares that it will continue to infringe upon said letters patent, or either of them; and denies that the complainant, by any threatened or unlawful acts on the part of this defendant, has suffered great and irreparable, or any, injury and damage.

6. This defendant further answering alleges that said letters patent No. 835,850 and No. 824,908 are, and each of them is, invalid and of no force or effect whatever in law, for the reasons, that the alleged inventions or improvements [16] described and claimed in said letters patent had been invented long prior to the date of the alleged invention thereof by the said complainant; that at the time of said alleged invention by the said complainant nothing more than ordinary mechanical knowledge and skill was required to make said alleged inventions or improvements; that said alleged inventions or improvements did not involve invention and did not possess novelty; were the result of aggregations and not of true or legal combinations; were well known and had been long in public use, and illustrated, described and disclosed in various prior patents of the United States and foreign countries, the numbers and dates of some of which this defendant is now able to give and to mention in this its answer, as follows, namely:

UNITED STATES LETTERS PATENT.

No. 36,393, September 9, 1862, Brown;
No. 202,816, April 23, 1878, Hatfield;
No. 206,701, August 6, 1878, Bligh;
No. 701,839, June 10, 1902, Callahan.

BRITISH LETTERS PATENT.

No. 1,807 of 1904, Rose;
No. 5,949 of 1904, Brown;
No. 25,986 of 1904, Matheson;
No. 377 of 1884, Haynes;
No. 3,885 of 1886, Thomson;
No. 8,284 of 1888, Jones;
No. 890 of 1856, Warren;
No. 2,349 of 1857, Berton;
No. 685 of 1869, Clark;
No. 15,736 of 1888, Utting;
No. 16,243 of 1888, Pope;
No. 4,465 of 1889, Backe;
No. 6,287 of 1889, Weight;
No. 848 of 1890, Strain;
No. 13,405 of 1893, Schmahl,
No. 2,339 of 1894, Pescheux;
No. 10,999 of 1894, Slight;
No. 21,711 of 1894, Leigh;
No. 21,718 of 1894, Justice;
No. 20,040 of 1894, Lunser;
No. 1,450 of 1901, Perry;
No. 25,532 of 1901, Smith;
No. 3,033 of 1903, Minnis;
No. 4,127 of 1903, Kendrick;
No. 11,133 of 1903, Pilz;

No. 21,396 of 1903, Katz;
No. 1,119 of 1861, Johnson;
No. 2,143 of 1870, Brownlie;
No. 1,010 of 1886, Brand;
No. 10,711 of 1887, Parker;
No. 14,215 of 1887, Smith;
No. 11,091 of 1888, Hart;
No. 13,657 of 1888, Brand;
No. 16,649 of 1898, Gandig;
No. 24,136 of 1893, Ness;
No. 23,875 of 1893, Pilz;

[17]

No. 5,418 of 1889, Wise;
No. 8,594 of 1887, Cunliffe;
No. 1,251 of 1884, Rydill;
No. 5,080 of 1884, Cunliffe;
No. 5,640 of 1882, Clark;
No. 3,822 of 1883, Rydill;
No. 5,947 of 1883, Rydill;
No. 2,345 of 1856, Wilkinson;
No. 2,943 of 1859, Spilsbury;
No. 29,956 of 1897, Boulet;
No. 4,562 of 1900, Janett;
No. 12,214 of 1902, Callahan;
No. 6,641 of 1904, Hulme;
No. 14,478 of 1904, Cohn & Shipp;
No. 11,876 of 1896, Busch;
No. 4,465 of 1889, Backe;
No. 16,649 of 1898, Gandig;
No. 12,811 of 1899, Paton;
No. 6,810 of 1894, Canesi;
No. 3,032 of 1895, Holt;

No. 23,297 of 1896, Zeigenspeck;
No. 20,667 of 1899, Staples;
No. 17,126 of 1900, Hofer;
No. 20,247 of 1901, Patch;
No. 13,871 of 1903, Breare;
No. 21,396 of 1903, Katzre;
No. 23,870 of 1903, Soderbaum;
No. 27,618 of 1903, Wolfram;
No. 7,955 of 1895, Watts;
No. 2,899 of 1869, Whitty;
No. 1,985 of 1900, Golby;
No. 1,290 of 1857, Bennett;
No. 2,349 of 1857, Berton;
No. 746 of 1894, Hole;
No. 5,823 of 1884, Peace;
No. 13,561 of 1884, Howard;
No. 3,016 of 1890, Wadsworth;
No. 19,631 of 1891, Constable;
No. 1,675 of 1900, Smith;
No. 15,656 of 1902, Broadhurst;
No. 28,475 of 1903, Krotoschin;
No. 22,036 of 1904, Schuley.

PRIOR INVENTION AND USE.

7. This defendant further answering alleges and states the fact to be that long before the alleged invention or discovery by the complainant of the said alleged inventions or improvements described in said letters patent, the same had been invented or discovered by one Julius Regenstein, of Chicago, Illinois, if any invention was or could have been involved in devising and making said alleged inventions or improvements, and had been put into public use at said

Chicago, Illinois, by George Reese and others, and by the said Julius Regenstein, who resides at 5523 Kenmore Avenue, Chicago, Illinois, and whose place of business is at 735 West Division Street, Chicago, Illinois, and that such public use at said Chicago, Illinois, was known to the said Julius Regenstein and others at said Chicago, Illinois.

8. And this defendant further answering denies the [18] equity of said complainant's bill of complaint, and says that complainant is not entitled to an injunction or an account of profits, or of damages, or of any other relief against this defendant, as prayed for in said bill of complaint; without this, that any other matter, cause, or thing, in said complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, traversed, or denied, confessed and avoided, is true; all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

H. J. HEINZ COMPANY.

By W. H. ROBINSON.

BANNING & BANNING,

Solicitors for Defendant.

THOMAS A. BANNING,

Of Counsel.

WM. A. SULLIVAN,

Resident Solicitor for Defendant.

[Endorsed]: Filed Sept. 27, 1910. Southard Hoffman, Clerk. [19]

In the Circuit Court of the United States for the Northern District of California, Ninth Circuit.

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

Replication.

This replicant saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception, which may be had or taken to the manifold insufficiencies of the answer of defendant, for replication thereto saith:

That it will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue and insufficient to be replied unto by this replicant, without this that any other matter or thing whatsoever in the said answer of defendant contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed and denied, is true.

All of which matters and things this replicant is now and will be ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly

prays as in and by its said bill it hath already prayed.

CHAS. E. TOWNSEND,

Solicitor for Complainant. [20]

Service of the within Replication admitted this
3d day of October, A. D. 1910.

BANNING & BANNING,

Solicitors for Respondent.

WM. A. SULLIVAN,

Resident Solicitor.

[Endorsed]: Filed Oct. 3, 1910. Southard Hoff-
man, Clerk. By J. A. Schaertzer, Deputy Clerk.
[21]

At a stated term, to wit, the March Term, A. D. 1912,
of the District Court of the United States of
America, in and for the Northern District of
California, Second Division, held at the court-
room in the City and County of San Francisco,
on Monday, the 24th day of June, in the year of
our Lord one thousand nine hundred and twelve.
Present: The Honorable WILLIAM C. VAN
FLEET, District Judge.

No. 15,204.

MAX M. COHN

vs.

H. J. HEINZ COMPANY.

Order for Decree.

This suit heretofore heard and submitted being
now fully considered, and the Court having rendered
its oral opinion thereon, it was ordered in accordance

with said opinion that a decree in favor of complainant as prayed for in the bill be signed, filed and entered herein. [22]

*In the District Court of the United States, Northern
District of California, Second Division.*

No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ, a Corporation,

Defendant.

Enrollment.

The complainant filed his bill of complaint herein on the 28th day of July, 1910, which is hereto annexed.

A subpoena to appear and answer in said cause was thereupon issued, returnable on the 6th day of September, A. D. 1910, which is hereto annexed.

The defendant appeared herein on the 5th day of September, 1910, by Banning & Banning and W. A. Sullivan, Esqs., its solicitors.

On the 26th day of September, 1910, an answer was filed herein, which is hereto annexed.

On the 3d day of October, 1910, a replication was filed herein, which is hereto annexed.

On the 24th day of June, 1912, an order directing decree to be signed, filed and entered in favor of complainant was made and entered herein, a copy of which said order is hereto annexed.

Thereafter, a final decree was signed, filed and entered herein in the words and figures as follows, viz:
[23]

*In the United States District Court for the Northern
District of California, Ninth Circuit, Division 2.*

IN EQUITY—#15,204.

M. M. COHN,

Complainant,

vs.

H. J. HEINZ, a Corporation,

Respondent.

At a stated term, to wit, the July term of the above-entitled court, held at the courtroom thereof in the City and County of San Francisco, State of California, on the 6th day of August, A. D. 1912. Present: Honorable WILLIAM C. VAN FLEET, District Judge, presiding.

Final Decree.

This cause having heretofore come on regularly to be heard upon the pleadings and proofs documentary and oral taken and submitted in the case, and being of record therein, the complainant being represented by Chas. E. Townsend, Esq., and the respondent by Messrs. Banning & Banning, and William A. Sullivan, Esq., and the cause having been duly argued and submitted to the Court for its consideration and decision, and [24] the Court being now fully advised in the premises, and the complainant having waived an accounting, and the parties stipulated in open court that a final decree may be

entered at this time, it is ORDERED, ADJUDGED and DECREED as follows:

That the letters patent sued on herein, to wit, United States Letters Patent No. 835,850, issued on November 13, A. D. 1906, to Max M. Cohn for improvements in envelopes and the claim thereof charged to have been infringed by the respondent is in all respects good and valid in law; that said Max M. Cohn was the original and first inventor of the invention described and claimed in said letters patent, said claim being as follows, to wit:

“As a new article of manufacture, and envelop with an unpunctured face of relatively opaque stock, said envelop-face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.”

That the letters patent sued on herein, to wit, United States Letters Patent No. 824,908, issued on July 3, A. D. 1906, to Max M. Cohn, for improvements in envelopes and the claims thereof charged to have been infringed by the respondent are in all respects good and valid in law; that the said Max M. Cohn was the original and first inventor of the invention described and claimed in said letters patent; said claims sued on and held to be valid and infringed being as follows, to wit:

“1. An advertising device comprising an envelop having a window through which the ad-

dressee's name on an inclosure may show through said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window, and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window.

"2. As an advertising device, an envelop having a [25] generally opaque face except for a transparent window portion through which an addressee's name on an inclosure may show through, said window being in general outline characteristic of a symbol of trade, and permanent printed matter on the face of the envelop related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods."

That the complainant, M. M. Cohn, was at the time the Court rendered its decision in said cause on the 24th day of June, 1912, the sole and exclusive owner of each of the said letters patent, together with all claims, demands and causes of action for the past infringement of said patents, and each of them.

That since the issuance of said patents, and each of them, and within six years prior to the commencement of this suit within the Northern District of California, the respondent herein, without license or consent of complainant, has conjointly used the inventions described and claimed in said letters patent and each of them, and has infringed upon each and all of the claims of each of said patents by using the

inventions respectively claimed and patented in and by said several patents and each of them.

And it is further **ORDERED, ADJUDGED AND DECREED** that the respondent, the H. J. Heinz Company, its officers, agents, servants, attorneys, workmen, and employees, be and they are hereby perpetually enjoined and restrained from further making, using or selling any envelopes or devices containing or embodying the inventions respectively claimed and patented in and by each or any of the claims of said Letters Patent #835,850 and #824,908. [26]

And it is further **ORDERED, ADJUDGED AND DECREED** that the complainant do have and recover of the respondent its costs and disbursements in this suit, 'taxed by the clerk at the sum of ——— dollars.

This decree shall be as entered on the 24th day of June, 1912.

Dated Aug. 6th, 1912.

WILLIAM C. VAN FLEET,
Judge.

[Endorsed]: Filed and Entered August 6, 1912.
Nunc pro tunc June 24, 1912. Jas. P. Brown, Clerk.
By W. B. Maling, Deputy Clerk. [27]

Certificate to Enrollment.

WHEREUPON, said pleadings, subpoena, copy of order, final decree, and a memorandum of taxed costs are hereto annexed; said final decree being duly signed, filed and enrolled, pursuant to the practice of said District Court, second division.

Attest my hand and the seal of said Circuit Court
this 6th day of August, 1912.

[Seal]

JAS. P. BROWN,
Clerk.

By W. B. Maling,
Deputy Clerk.

[Endorsed]: Filed August 6th, 1912. Jas. P.
Brown, Clerk. By W. B. Maling, Deputy Clerk.
[28]

*In the District Court of the United States in and for
the Northern District of California, Second Di-
vision.*

Hon. WM. C. VAN FLEET, Judge.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY, a Corporation,
Respondent.

Monday, June 24th, 1912.

Appearances:

CHAS. E. TOWNSEND, Solicitor for Complainant;
BANNING & BANNING and WM. A. SULLIVAN,
Solicitors for Respondent.

Oral Opinion.

*In the District Court of the United States in and for
the Northern District of California, Second Di-
vision.*

Hon. W. C. VAN FLEET, Judge.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY, a Corporation,

Respondent.

Monday, June 24th, 1912.

THE COURT (Orally): This is a suit in equity to restrain the use by the defendant of a certain envelope alleged to infringe the patents of the complainant sued on, numbered respectively 835,850 and 824,908, both issued to the complainant [29] and relating to an envelope commonly referred to in the art as a window envelope; that is, an unpunctured envelope made from generally opaque stock, having a transparent portion on its address side called a window, through which an address placed upon the enclosure may show through, and thus avoid the necessity of writing it upon the face of the envelope,—the window or transparent portion being produced by the application of some oily substance suitable for the purpose of producing the transparency. This window portion is surrounded by a colored or tinted border of opaque ink to give the window definition and cover up an otherwise unsightly and irregular margin produced by the inevitable tendency of the

oily application to bleed or creep into the surrounding opaque portion of the paper.

Patent 835,850, although later in issue, was first applied for and covers the primary form of the invention above outlined.

Patent No. 824,908, which, although later in application, is earlier in issue, is based upon the first as a divisional application, and relates to an envelope such as described in the primary application, but having the window or transparent portion produced in the form or outline characteristic of some symbol of trade, article of commerce or trademark. There is also printed matter of a permanent character appearing upon the face near the window to indicate and attract attention to the brand of goods or article of merchandise designed to be advertised thereby.

The main defense of the defendant, who is a user of the article and not the manufacturer, is that the complainant here was not the first inventor or discoverer of the device or process covered by these patents, but that the discovery was [30] made by and put in use by one Regenstein for the manufacturer, the Transo Paper Company, the party really making the defense here; and a large part of the record is devoted to evidence bearing upon the question as to who was in fact the original designer or inventor of the device. The rule is very well established in such cases that in order to overcome the presumption of validity of the patent and the prior rights thereby protected, the evidence must be such as to satisfy the mind of the Court beyond a rea-

sonable doubt that the patentee was not the original discoverer or designer of the device; and I am fully persuaded, after a very thorough examination of the evidence in this case that it does not come up to the requisite strength to overthrow the primary case of the complainant and the presumption which runs in his favor through the issuance of the patent. It is not necessary, nor would it be of any material benefit, to go into any detailed statement of that evidence. It is somewhat unsatisfactory in certain respects on both sides, but it is such as in my judgment fails to establish this claim of the defense.

The second defense is that there was a want of novelty, by reason of the prior art, in the primary invention;—not perhaps a strict anticipation but a failure to disclose novelty by reason of the existing state of the art. A large amount of evidence is devoted to that subject as well; a considerable number of prior patents were put in evidence for the purpose of sustaining this plea of anticipation or want of novelty. I have examined those features of the evidence very carefully. What is apparently regarded by defendant as the best reference is a patent to one Brown in 1862. That does disclose a glimmering of one feature of the invention that is involved in [31] this first Cohn patent. I should say perhaps, preliminarily, that these Cohn patents are what are known in the patent law as combination patents; that is, they disclose a combination device or process; I think, perhaps, “process” would be the better term, because it is by a process that the articles of commerce are produced. This Brown patent of

1862 discloses in a way an idea approaching one element of the first Cohn Patent; that is, it discloses an idea of a window envelope. This window, however, is unaccompanied by any ring or border, and the calls of the patent are indefinite as to the manner in which the window shall be produced. It says that the transparent portion may be produced in the same way that tracing paper may be produced, while the evidence tends very strongly to show that by the application of that method no successful result would be accomplished, as the means for making tracing paper are such that they cannot be applied for the purpose of producing transparency in simply a portion of the sheet; it must be applied to the entire sheet. Moreover, as I say, the Cohn patent being a combination, the Brown patent entirely fails to come up to an anticipation, because it involves, if it be admitted that that element is disclosed in the Brown patent, nothing but the single feature of this transparent window unaccompanied by the other which I regard as an essentially characteristic feature of the first Cohn patent, a border or ring of opaque ink applied for the purpose of covering up the ragged edge that the evidence discloses inevitably results from the application of the oily substance applied for the purpose of producing transparency.

There is also a British patent issued to one Busch which is pleaded as an anticipation, or, more properly, as an illustration of the state of the art, which it is claimed should preclude [32] a finding of novelty. This patent is claimed to embrace the feature of a ring or border. I am satisfied from my ex-

amination of the record that this claim cannot be sustained. Moreover, the Busch patent involved a device which required for its production a paper entirely transparent; the entire envelope in its primary form was to be made of transparent material, and thereupon the window feature would be produced by covering the entire portion of the face of the envelope other than the window space with opaque ink, thereby resulting in the production of an envelope, the back portion of which would remain transparent, and the transparent opening or window in front, while the balance of the face of the envelope would be entirely in either black or some other dark colored ink which, as the evidence tends to show, produced an unsightly or unattractive effect, and rendered that device very largely an unsalable product; that is, it never was a success, and so far as appears, it has gone entirely out of use, if it ever had any; so that I am unable to regard that as an anticipation of the device embraced in the Cohn patents or either of them.

There was another British patent issued to one Boldt. That is a device which is even broader in its distinctive features from the Cohn conception than the one just suggested. It was a patent secured by Boldt for a method or process of making not strictly an envelope, although the envelope is included within the definition of its terms, but a receptacle or casing or container for goods of any particular character that for the purposes of commerce it should be desired to have done up in packages; and had this transparent window or opening so placed as to disclose the character of the contents of the

package, so that picking up the package you could look through this transparency and see the character of the goods contained therein [33] and it was that feature which seemed to be the principal idea in the mind of the inventor of that device, that is, making a container which would enable the buyer of an article of commerce to readily see what he was getting without breaking the package. It is largely, if not wholly, to my mind, along a different line in its conception than the Cohn patents, and I do not think, either in a primary sense or in its details, can be looked to or regarded as an anticipation of the real feature which is embraced in the Cohn conception. Moreover, it is constructed in a distinctively different manner from the Cohn patent. It is not a one piece receptacle or envelope, but is an envelope or covering having a punctured face, and the puncture or opening is then covered or closed by a separate piece of transparent material of any appropriate character. In that respect it is entirely different from the conception of Cohn, which embodies, as indicated by the claim of the patent—I am speaking now of the first Cohn patent—a single piece, an unpunctured envelope rendered transparent through the application of a substance which is employed for that purpose. This Boldt patent, like the previous one, that of Busch, seems never to have had any successful life, so far as commerce is concerned, and so far as the evidence discloses is not now in use. This window, moreover, which Boldt provided for was likewise unaccompanied by any border or ring for the concealing of the edge. It is true, however, that that was a

method of construction which did not require it, because of the different manner in which the window was produced; but I am entirely satisfied that no one of these so-called anticipations put in evidence subserve the purpose for which they were submitted, and that there is nothing in the prior art which can be regarded [34] as an anticipation of the first Cohn conception, that is the device embraced in the so-called first patent.

It is unnecessary to state, perhaps, with reference to a doctrine so well established, that it is not sufficient, as against a combination patent, to show simply anticipation of some one or more of the different elements of the combination, but not all. The unitary result of the combination is the subject of the patent; and unless you disclose in the art an anticipation of that unitary thing you do not disclose anticipation; and so, whether or not the record does disclose that some one or two features of either one of these devices is anticipated, the evidence entirely fails to show any device which could be taken as an anticipation of the combination of either patent.

It is also urged as against the second Cohn patent, which is also claimed to be infringed by the envelope defendant uses, that it is wholly lacking in novelty and patentability. As indicated, that device is merely a step beyond the primary device covered by the first Cohn patent. It employs the same method for producing the envelope and the transparency, but adds the distinctive feature of changing the form of the window as may be desired to represent a symbol of trade, a trademark, or article of manufacture, ac-

accompanied, as stated, by a permanent printed word or sentence such as may be desired which always remains upon the envelope however used, as purely an advertising feature. It is claimed that this change from the original was purely an advance in the nature of a mechanical difference; that it involved no use of the inventive faculty. I am unable to sustain this contention. I think that the device gives very decided evidence of inventive thought. Inventive thought [35] is not confined, of course, to devices which relate to machinery or things of that kind, but to anything which produces a result in the art or science to which it relates which is of a novel and useful character and which is materially different from that which precedes it. I think that the evidence discloses very clearly that this conception was one which had been sought after for a long period,—something of the kind,—but the real idea occurred to no one to put it into successful form until Cohn seized upon it. I am satisfied that the objection that the second patent does not cover a device which discloses patentability is entirely unsustained by the evidence.

The last defense is that there is a want of infringement in the use of the envelope which the defendant employed because of certain differences in its construction. There is no question made but what it infringes the first Cohn patent, but it is claimed that it fails as an infringement of the second Cohn patent because of certain structural differences. The primary form of the envelope is produced in precisely the same way, through the application to a portion of its opaque face of some transparency producing ma-

terial; the ring or border is applied in precisely the same way and is of distinctive characteristic form; but although accompanied by permanent printed matter, this printed matter instead of being upon the face of the envelope adjacent to the window is printed upon the inside of the back flap of the envelope in such a position that it shows through the window when the enclosure is removed, and not being visible until the enclosure is removed; and the claim is that by reason of this difference, the second Cohn patent, being as claimed a very narrow one, there is not disclosed equivalency in the manner of constructing the [36] defendant's envelope. I am of the opinion that this defense is without merit. Equivalency is always to be found where the same or like result is produced and the function is performed in substantially the same way; and I am quite satisfied that under any just application of the rule bearing upon that question, equivalency would be found in this device which is used by the defendant. This being so, I am satisfied that the defenses must be held bad, and the decree must go in favor of the complainant as prayed.

[Endorsed]: Filed July 26, 1912. Jas. P. Brown, Clerk. By J. A. Schaertzer, Deputy Clerk. [37]

[Notice of Taking of Testimony.]

*In the Circuit Court of the United States for the
Northern District of California, Ninth Circuit.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

To the Above-named Defendant, and to Banning &
Banning and Wm. A. Solicitors for Defendant.

You are hereby notified that on Thursday morning, November 3, 1910, commencing at the hour of ten o'clock A. M., before the Hon. H. M. WRIGHT, Examiner in Chancery, at his offices in the Courthouse and Postoffice Building, at the corner of Seventh and Mission Streets, San Francisco, California, I will proceed with the taking of testimony on behalf of the above-named complainant to be used on final hearing.

You are invited to be present and cross-examine.

Dated this 19th day of October, 1910.

Yours, etc.,

CHAS. E. TOWNSEND,

Solicitor for Complainant.

Service of copy of the within notice admitted this
19th day of October, A. D. 1910.

BANNING & BANNING,

Solicitors for Defendant.

WM. A. SULLIVAN,

Resident Solicitor. [38]

[Testimony.]

*In Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.*

Before H. M. WRIGHT, Esq., Examiner in
Chancery.

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

BE IT REMEMBERED, that on the 3d day of November, 1910, at my chambers, No. 215, in the United States Postoffice and Court Building, corner of Seventh and Mission streets, in the City and County of San Francisco, State of California, before me, H. M. Wright, Examiner in Chancery in the Circuit Court of the United States for the Ninth Circuit and Northern District of California, personally appeared Max M. Cohn and Frederick E. Maynard, who were produced and examined on behalf of the complaint in the above-entitled cause.

That Charles E. Townsend, Esq., appeared as solicitor in behalf of complainant and William A. Sullivan, Esq., appeared on behalf of defendant.

The following proceedings were had:

[Stipulations Concerning Taking of Testimony, etc.]

It is stipulated between the respective parties that the testimony and proceedings in this case before the Examiner H. M. Wright, Esq., may be taken in shorthand by Brainard C. Brown and by him put into typewriting.

It is stipulated between the respective parties that the testimony in the above-entitled cause shall be taken under [39] the 67th and 68th Rules in Equity, as amended, and according to the rules and usual practice of the United States Circuit Court for the Northern District of California, and shall be taken orally by questions and answers, and may be taken down directly on a typewriting machine by a competent stenographer, and thereafter reduced to typewritten form under the direction of the officer in charge of the examination; that where such testimony is taken outside of the Northern District of California, it may be taken before a qualified notary public, or other officer competent to administer oaths, at the place where the testimony is taken, after reasonable notice in writing first served on counsel for the opposing party, which notice shall, when practicable, state the name of the notary or officer before whom the testimony is to be taken, and shall state the place where and time when the testimony is to be taken, and the names and addresses of the witnesses to be examined, and all notices of taking testimony by either party shall be given a sufficient length of time before the taking of testimony to enable counsel to attend from San Francisco or Chicago, if counsel so desire.

2. That the reading and signing of the testimony by the several witnesses are waived.

3. That the defendant is a corporation, as alleged in the bill of complaint.

4. That complete, unabridged copies of the specifications of the United States and foreign patents,

including the drawings accompanying same, printed and distributed by the Patent Offices in this or other countries may be introduced in evidence with the same force and effect as though certified.

Mr. TOWNSEND.—We offer in evidence the two patents here sued on, being Number 835,850, dated November 13th, 1906, envelop, patent issued to M. M. Cohn, and ask that it be [40] marked Complainant's Exhibit "A" (so marked); and patent Number 824,908, dated July 3, 1906, envelope, issued to M. M. Cohn, and asked it be marked Complainant's Exhibit "B" (so marked).

It is further stipulated and agreed that the envelope here offered in evidence is such an envelope as the defendant has used in the Northern District of California, in the City and County of San Francisco, since the issuance of the patent and prior to the filing of the bill.

Mr. TOWNSEND.—This envelope is offered in evidence and will be marked "Complainant's Exhibit "C." [41]

[Testimony of Max M. Cohn, for Complainant.]

Examination-in-chief of MAX M. COHN, called on behalf of complainant; sworn.

(By Mr. TOWNSEND.)

Q. 1. Will you please state your name, age, residence and occupation?

A. Max M. Cohn; 12 Monte avenue, Piedmont; paperman; paper business; age, 42.

Q. 2. Are you the complainant in this action?

A. I am.

Q. 3. Are you the patentee mentioned in the two

(Testimony of Max M. Cohn.)

patents? A. I am.

Q. 4. Do you own those patents? A. I do.

Q. 5. Have you ever made any assignment or transfer of either of them? A. I have not.

Cross-examination.

(By Mr. SULLIVAN.)

XQ. 1. With whom are you connected, Mr. Cohn?

A. The Zellerbach Paper Company.

XQ. 2. And how long have you been so connected with the Zellerbach Paper Co.? A. About 7 years.

XQ. 3. And the Zellerbach Paper Co. carry on an extensive paper business, do they? A. They do.

XQ. 4. And they deal, among other things, in envelopes? A. Yes.

XQ. 5. And have been during all the time you have been connected with them? A. They have.

XQ. 6. How long have you been in the paper business? A. Seven years.

XQ. 7. So that you were not in the paper business prior to being connected with the Zellerbach Paper Co.? Is that correct? A. That is right.

XQ. 8. Now, then, had you ever invented any other patents prior to the time that you claim to have invented this particular one?

Mr. TOWNSEND.—We object to that as not proper cross-examination, and [42] as irrelevant and immaterial.

XQ. 9. (By Mr. SULLIVAN.) Mr. Cohn, the Zellerbach Paper Co., you said, deal in envelopes. Don't you know, as a matter of fact, that prior to the time that you applied for a patent in this case an

(Testimony of Max M. Cohn.)

envelope containing a visible window was in general vogue, and used throughout the United States generally, and sold by the Zellerbach Paper Co.?

Mr. TOWNSEND.—We object to that question as not proper cross-examination; and if it is an attempt to prove anticipation, there has been no notice given according to the statute.

XQ. 10. (By Mr. SULLIVAN.) Well, I insist on an answer. Do you decline to answer? (Question read.)

Mr. TOWNSEND.—The question is objected to further as being indefinite as to what is meant.

Mr. SULLIVAN.—I will withdraw the question temporarily, then.

XQ. 11. Prior to the time of your applying for a patent for the envelope heretofore introduced in evidence in this case, don't you know, Mr. Cohn, that envelopes similar in kind to the one introduced in evidence, but differing from it merely in that the visible window part of the envelope was pasted in the envelope, were manufactured throughout the United States, and actually sold by the Zellerbach Paper Co.?

Mr. TOWNSEND.—The question is objected to as not proper cross-examination, and on the ground, further, that the matter is inadmissible if the question is attempted to be anticipatory, as no notice has been given according to the statute; further, that the question is indefinite as to the matter of "similarity," and is further indefinite and an incorrect statement of what the patented envelope is or what

(Testimony of Max M. Cohn.)

the patents cover. If the counsel will indicate the nature of the specific envelope which he may have in mind, the question may perhaps be not only more intelligible, but the witness may be able to answer it.

Mr. SULLIVAN.—I am not asking the witness as to whether or not [43] an envelope having a single sheet of paper for the front was used, but merely whether or not a punctured envelope having a window of visible paper was used. That is what I mean.

Mr. TOWNSEND.—Then, your question eliminates entirely the matter of the unpunctured envelope and the question of the tinting of the border and the anti-creeping preparation?

Mr. SULLIVAN.—At this time, yes.

A. There was an envelope with a hole cut in it, over which a piece of transparent paper was pasted in use.

XQ. 12. Yes; and they had been used for years prior to the time that you filed your application for a patent in this case.

A. No, not for years prior to the time that I filed my application for patent.

XQ. 13. Well, how long then?

A. A very short time.

XQ. 14. Do you know how long it was used?

A. I do not.

XQ. 15. When did you first conceive of this invention, Mr. Cohn?

Mr. TOWNSEND.—We object to that as not proper cross-examination and as having no proper

(Testimony of Max M. Cohn.)

place in the examination at this time.

Mr. SULLIVAN.—I insist on an answer.

Mr. TOWNSEND.—I further object that it is a fishing expedition and that the matter is not proper cross-examination.

Mr. SULLIVAN.—Does the witness decline to answer? A. I can't answer at the present moment.

XQ. 16. You don't know then when you first conceived of the envelope which you claim to have patented?

Mr. TOWNSEND.—The witness has not said that he didn't know.

A. Not at the present time.

Mr. TOWNSEND.—I object to this line of examination as improper cross-examination and as irrelevant and immaterial.

XQ. 17. (By Mr. SULLIVAN.) Prior to the time of filing your application for a patent in this matter had you applied in any other country for a patent on the envelope which you claim was patented to you by the Government of the United States? [44] A. No, sir.

XQ. 18. You had not? Now, there are two patents in this matter, Mr. Cohn, as I understand it. Is that correct? A. Yes.

XQ. 19. Now, will you let me understand what the two patents are?

Mr. TOWNSEND.—The patents are the best evidence as to what they are.

XQ. 20. (By Mr. SULLIVAN.) How long prior to the filing of your application for the patent Num-

(Testimony of Max M. Cohn.)

ber 835,850 was it that you conceived the idea of that patent?

Mr. TOWNSEND.—We object to that as not proper cross-examination and on the ground that it is merely a fishing expedition. The witness has stated that he is not able at this time to recollect when he conceived it.

XQ. 21. (By Mr. SULLIVAN.) Do you decline to answer?

A. My answer is the same as before, that I cannot at this time state the time of conception.

XQ. 22. You don't know whether it was two years or six years or twenty years or one month prior to the time of filing your applications? Is that the way you want to be understood as testifying?

Mr. TOWNSEND.—We object to that as not proper cross-examination and upon the grounds previously stated.

A. It would be necessary for me to go through a great amount of data which I have and consult with some of my witnesses, before being able to answer as to the time of conception.

XQ. 23. (By Mr. SULLIVAN.) Well, you were the person who conceived the patent, were you not, Mr. Cohn? A. Yes, sir.

XQ. 24. And you at this time cannot give us any approximate idea as to how long prior to the time you filed your application in this matter it was that you conceived the idea of this patent?

Mr. TOWNSEND.—We object to the question as not proper cross-examination. [45] The witness

(Testimony of Max M. Cohn.)

has testified that he is the inventor, and the patent speaks for itself. The only question now before the Court is the matter of the envelope alleged to have been infringed, which is admitted to have been used by the defendant. The question is whether that device infringes the claims of the patent sued on. (Question read.)

A. No, sir.

XQ. 25. (By Mr. SULLIVAN.) And your answer would be the same as to the patent number 824,908? Is that correct?

Mr. TOWNSEND.—We make the same objection.

A. Yes, sir.

XQ. 26. (By Mr. SULLIVAN.) What was the first feature of the patent which you conceived?

Mr. TOWNSEND.—We object to that question as not proper cross-examination; furthermore, as indefinite and because the conception is a conception of a combination; that the patent is on the combination; not on any individual feature.

XQ. 27. (By Mr. SULLIVAN.) What is the answer?

A. I don't know just what you mean by the question.

XQ. 28. Well, was the first general feature of the patent conceived nonperforated window?

Mr. TOWNSEND.—We object to that as not proper cross-examination; indefinite; and upon the grounds previously stated.

A. I can't recollect at this time just what the first conception of the patent was.

(Testimony of Max M. Cohn.)

XQ. 29. Have you invented very many patents since the time you invented this particular one—or any patents? A. Yes, sir.

XQ. 30. How many?

Mr. TOWNSEND.—We object to that as wholly irrelevant and immaterial.

A. I believe two others.

XQ. 31. (By Mr. SULLIVAN.) So that all together you have invented these two patents in this matter, and two others, and yet you can't tell us how long prior to the time you filed your application for the patents in this case you first conceived the idea of the patent, nor are you able to tell us [46] what was the first conception of the patent that you had in this particular case, what feature you first conceived. Is that correct? A. Yes, sir.

XQ. 32. Are you associated with anybody in England?

Mr. TOWNSEND.—We object to that as not proper cross-examination and as irrelevant and immaterial.

A. No, sir.

XQ. 33. (By Mr. SULLIVAN.) Are you associated with a man named Shipps, in England or in this country?

Mr. TOWNSEND.—The same objection.

A. Not at the present time.

XQ. 34. (By Mr. SULLIVAN.) Were you at the time you filed an application for a patent in this instance, in these two instances, associated with a man named Shipps in connection with this patent?

(Testimony of Max M. Cohn.)

Mr. TOWNSEND.—We object to that as not proper cross-examination, as irrelevant and immaterial, and as having no bearing whatever on the issues in the case. The question is further objected to as indefinite as to what is meant by this patent.

Mr. SULLIVAN.—Very well; I will withdraw the question then.

XQ. 35. Were you at or prior to the time of filing your applications for the issuance of the patents Number 824,908 and 835,850, associated with a Mr. Shipps in the manufacture or in the invention of either of those patents?

A. You are speaking now of the patents before you?

XQ. 36. Yes, sir. A. No, sir.

XQ. 37. Either in this country or in England?

A. No, sir.

XQ. 38. Were you at and prior to the time of the filing of either of these applications for either of the patents associated with that Mr. Shipps in connection with any patents of an envelope with a visible window, either in this country or in England?

Mr. TOWNSEND.—We object to that as not proper cross-examination; as irrelevant and immaterial; neither patent and neither invention would have any bearing in the issues. [47]

A. Will I answer the question?

Mr. TOWNSEND.—Yes, answer the question. (Question read.)

A. I took out a joint patent with Mr. Shipp, not Shipps; Shipp, in England.

(Testimony of Max M. Cohn.)

XQ. 39. (By Mr. SULLIVAN.) What year was that in, Mr. Cohn?

Mr. TOWNSEND.—I make the same objection; not proper cross-examination.

A. I think in 1904.

XQ. 40. (By Mr. SULLIVAN.) Do you know what time in 1904?

Mr. TOWNSEND.—We make the same objection.

A. I think June or July.

XQ. 41. (By Mr. SULLIVAN.) Yes, sir; that was a patent of an envelope, was it not, with a visible window in front? Is that correct?

Mr. TOWNSEND.—We make the same objection.

XQ. 42. (By Mr. SULLIVAN.) And in many respects it was similar to the envelope for which you afterwards acquired these two patents in the United States? Is that correct?

Mr. TOWNSEND.—That is objected to as not proper cross-examination.

A. No, sir.

XQ. 43. (By Mr. SULLIVAN.) Did the envelope for which you and Mr. Shipp obtained a patent in England have a border on it so designed as to advertise the business or trade of the person using the envelope?

Mr. TOWNSEND.—We make the same objection.

A. No, sir.

XQ. 44. (By Mr. SULLIVAN.) So that had you had at the time you filed your application in England in 1904 in connection with Mr. Shipp for a patent of an envelope having a visible window in front—up to

(Testimony of Max M. Cohn.)

that time you had not conceived the idea of having a border around that visible window advertising the particular character of business in which the man using the envelope was engaged. [48]

Mr. TOWNSEND.—We object to that as not proper cross-examination, as an incorrect conclusion, a wholly incorrect conclusion of the counsel, as the witness certainly has not testified to any such fact; furthermore, the inference is wrong and the question is objected to because the English patent, whatever it may have been, is admitted to have been a joint invention, a joint patent, and the present patents in suit and the inventions therein described are the sole inventions of Mr. Cohn, and it cannot be seen how such a British patent, if one exists, could have any bearing on the present issues,

A. I made no such statement.

XQ. 45. (By Mr. SULLIVAN.) I ask you, then, if up to June or July as you stated, 1904, when you and Mr. Shipp applied for a patent in England for an envelope with a visible window, had you up to that time conceived of the idea of placing a border around the edge of that visible window indicating the particular character of business in which the user of the envelope was engaged?

Mr. TOWNSEND.—We object to that as not proper cross-examination, and as purely a fishing expedition, designed, primarily to shape and color the defendant's later testimony, or those behind the defendant. The question is further objected to on the

(Testimony of Max M. Cohn.)

ground that the witness has testified that he could not at this time testify as to when he did conceive the present invention.

Mr. SULLIVAN.—The witness refuses to testify as to whether it was 10 years or 20 years or one month prior to the filing of his application in this country that he conceived the idea of the envelope in question. I am trying to arrive somewhat approximately near the time when he did conceive the idea.

A. As I stated before, it is impossible for me at this time.

XQ. 46. Do you answer that in that fashion simply because your counsel at this moment called your attention to the fact that [49] you had so testified? Is that your only reason for so testifying now? A. No, sir; my reason is because it is a fact.

XQ. 47. You can't tell us at all then whether or not up to June, 1904, you had conceived the idea of a visible window of the envelope for which you applied for a patent in England or in this country?

Mr. TOWNSEND.—The question is objected to as not proper cross-examination.

A. I can't state at this time.

XQ. 48. (By Mr. SULLIVAN.) You can't state? In what particular features was the envelope for which you and Mr. Shipp in England acquired a patent, different from the envelopes patented Number 835,850 or 824,908?

Mr. TOWNSEND.—We make the same objection; also, that the patents are the best evidence as to the

(Testimony of Max M. Cohn.)

similarity or differences.

A. The English patent covers an envelope made from transparent paper, while the patent in question covers an envelope made from opaque paper which was treated with a preparation to make it transparent, with a colored or tinted border around the same, to obliterate the creeping tendency of the transparent material into the opaque stock.

XQ. 49. (By Mr. SULLIVAN.) Did the patent for which you and Mr. Shipp applied in England for an envelope, have a border around it?

Mr. TOWNSEND.—We object to that as not proper cross-examination.

A. There was no border around those envelopes.

XQ. 50. (By Mr. SULLIVAN.) Now, as I understand your testimony, you are not prepared to tell us whether prior to 1904, when you and Mr. Shipp applied for a patent on an envelope in England somewhat similar to the envelope in question, you had conceived the idea of a border around the window of the envelope indicating the character of the business in which the one who used the envelope was engaged, or not indicating the character of his business? That is the [50] way I understand your testimony?

A. Yes, sir.

XQ. 51. And why was it, then, that when you and Mr. Shipp applied for a patent of an envelope in England similar to the one in question you and Mr. Shipp did not include in that application for a patent a border around the surface of the window indicating the character of the business in which the

(Testimony of Max M. Cohn.)

man was engaged who used the envelope, or not indicating such business?

Mr. TOWNSEND.—We object to that as not proper cross-examination, as irrelevant and immaterial, and the question is objected to on further grounds as speaking of the British patent as being similar to the patents in suit, while such is not the case; and furthermore, that the British patent was for a joint invention, and the present patents are the sole inventions of Mr. Cohn.

A. Firstly, I do not admit that these patents are similar, and consequently there was no need for a border in the English patent, as there was no material used which crept into the surrounding stock.

XQ. 52. (By Mr. SULLIVAN.) One of the features of your patent, Mr. Cohn, is the advertising of the border around the envelope, is it not?

A. Yes, sir.

XQ. 53. And notwithstanding the fact that one of the features of your patent is the advertising portion, as indicated by the border around the edge of the window, you did not include that in your alleged patent in the application which you and Mr. Shipp took out in England? Is that correct?

A. Yes, sir.

XQ. 54. Are you a member of the firm of Zellerbach and Company?

A. I am secretary of the firm.

XQ. 55. It is a corporation, is it not?

A. Yes, sir.

XQ. 56. And you are the owner and holder of

(Testimony of Max M. Cohn.)

capital stock of that corporation, are you not?

A. Yes, sir.

XQ. 57. Has Zellerbach & Co. any interest whatever in any of these patents? A. No, sir.

XQ. 58. By whom are the patented envelopes manufactured? [51]

A. What patented envelopes?

XQ. 59. The ones in suit here, 835,850 and 824,908.

A. They are not being manufactured at the present time.

XQ. 60. By whom have they been manufactured?

A. I manufactured them myself.

XQ. 61. I beg pardon.

A. I have had them made in various factories, different places.

XQ. 62. Have you had them manufactured by Zellerbach & Co.? A. No, sir.

XQ. 63. Does Zellerbach & Co. do any manufacturing of envelopes?

A. They make some hand-made envelopes. I want to correct the other answer here. The manufacturing department of the Zellerbach Paper Co. have folded some of the envelopes made under my patent.

XQ. 64. You say those envelopes are not being manufactured at the present time?

A. The envelopes under my patent are not being manufactured at the present time.

XQ. 65. They are not being manufactured by

(Testimony of Max M. Cohn.)

yourself and are not being manufactured by the Zellerbach Paper Co.?

A. What I meant to convey by my answer that the envelopes are not being manufactured at the present time is that they are not being manufactured with the consent of the patentee.

Mr. SULLIVAN.—I move to strike out the answer as not responsive to the question. (Question read.)

A. What do you mean by “these envelopes”?

XQ. 66. The envelopes patented or the alleged patented envelopes Numbers 835,850 and 824,908.

A. They are now being manufactured—

Mr. SULLIVAN.—I will call the witness’ attention to the fact that he is obliged to testify to matters of his own knowledge.

A. They are now being manufactured and used extensively throughout the United States by an infringer of the patent. [52]

Mr. SULLIVAN.—I move to strike out the words “by an infringer of the patent” as not responsive to the question and as a conclusion of the witness.

XQ. 67. Have you made any assignment of either of these patents to Zellerbach & Co., a corporation, or to any person, firm or corporation? A. No, sir.

XQ. 68. Have you any agreement or understanding with Zellerbach & Co., a corporation, or with any other person, firm or corporation whereby you hold these patents for either of them in trust for such person, firm or corporation? A. No, sir.

XQ. 69. At the time of making application for

(Testimony of Max M. Cohn.)

these patents had Mr. Shipp, with whom you had applied for a patent in England, any interest in these patents or either of them? A. No, sir.

XQ. 70. Did Mr. Shipp work with you jointly in the preparation of either of these envelopes for which you obtained patents in the United States, or in the preparation of the application for either of these patents? A. No, sir.

XQ. 71. Where does Mr. Shipp reside?

A. I think he resides in Berkeley.

XQ. 72. How long has he resided there?

A. I don't know.

XQ. 73. Has he resided there during the entire seven years during which you have been connected with Zellerbach & Co., a corporation? A. No, sir.

XQ. 74. Is he at the present time employed by Zellerbach & Co., a corporation? A. No, sir.

XQ. 75. Was he employed by Zellerbach & Co., at any of the times during which you were engaged in the manufacturing or in the invention of these envelopes? A. No, sir.

XQ. 76. During the year of 1904, when you and he applied for a patent of an envelope in England, where did he reside?

A. He resided in San Francisco; I think.

XQ. 77. Yes, sir. During that same period of time where did you [53] reside?

A. In San Francisco.

XQ. 78. Yes, sir. During the year of 1904 was Mr. Shipp employed by Zellerbach & Co.?

A. No, sir.

(Testimony of Max M. Cohn.)

XQ. 79. Was he engaged in work there?

A. No, sir.

XQ. 80. During the year of 1904, when you and he prepared the envelope on which you afterwards acquired a patent in England, did you work together at any particular place in the preparation of that patent?

Mr. TOWNSEND.—We object to that as not proper cross-examination, irrelevant and immaterial.

A. I don't know what you mean by working together. If we worked in the same place?

XQ. 81. (By Mr. SULLIVAN.) No, I mean, had you any joint work room or anything of that character in which you and he prepared the envelopes for which you afterwards acquired the patents?

A. No, we had no such joint room.

XQ. 82. Subsequent to 1904, when the British patent was obtained, did you and Mr. Shipp engage in any further enterprise in connection with the invention of any patents?

Mr. TOWNSEND.—We object to that as not proper cross-examination, irrelevant immaterial and indefinite.

A. No further enterprise.

XQ. 83. (By Mr. SULLIVAN.) What are Mr. Shipp's initials? Do you know? A. J. C.

XQ. 84. J. C. S-h-i-p? A. p-p. [54]

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 1. Have you granted any right or license to

(Testimony of Max M. Cohn.)

the respondent to use your patented envelopes?

A. No, sir.

RDQ. 2. Is the use of the envelopes represented by Exhibit "C" of the defendant with or without your consent? A. Without my consent.

RDQ. 3. Are the alleged infringing envelopes made with or without your consent?

A. Without my consent.

RDQ. 4. On the envelopes manufactured by you did they bear the date and number of your patents?

A. They were marked "patent applied for." [55]

**[Testimony of Frederick E. Maynard, for
Complainant.]**

Examination-in-chief of FREDERICK E. MAYNARD, called on behalf of complainant; sworn.

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age, residence and occupation, Mr. Maynard?

A. Frederick E. Maynard; residence, Berkeley; age, 32; by occupation I am a patent solicitor, and engaged in the drafting of specifications for patents, drawings, sketching out very frequently from the oral description of inventors, their inventions; making the official drawings for the same—

Q. 2. I was going to ask you in connection with your occupation, what experience have you had to make you familiar with patent specifications and claims and drawings, if you have had such experience?

A. For the past ten years I have devoted all my

(Testimony of Frederick E. Maynard.)

time to the preparation and filing of applications for patents in the United States Patent Office.

Mr. SULLIVAN.—I will admit that the witness is fully qualified.

Q. 3. (By Mr. TOWNSEND.) Have you read and do you understand the two patents here in suit?

A. I have.

Q. 4. Have you made any comparison of those patents with the alleged infringing envelope used by the respondent and entitled as exhibit "C"?

A. I have very carefully compared the patents together, and the subject matter of each, and the alleged infringing envelope.

Q. 5. I show you a bottle with a label and ask you if you know what that is, Mr. Maynard?

A. The bottle here presented is one of the articles manufactured by the Heinz Company, bearing the well-known symbol of trade in the shape of a pickle, associated with the word "Heinz." Sometimes also associated with the words "57 varieties," this particular trademark being a prominent and well-known one to the public and by which the goods of the Heinz Company can be at once detected. [56]

Mr. TOWNSEND.—I offer in evidence the bottle just referred to, with the lower label of the Heinz Company, and ask that it be marked Complainant's Exhibit "D."

Mr. SULLIVAN.—We object to it as incompetent, irrelevant and immaterial.

(So marked.)

Q. 6. (By Mr. TOWNSEND.) Now, Mr. May-

(Testimony of Frederick E. Maynard.)

nard, I wish you would take the two patents here in suit, being Complainant's Exhibits "A" and "B," and the envelope, exhibit "C," which is claimed to be an infringement and describe the patents, making such comparison as you wish, between the envelope exhibit "C" and the patents, and with special reference to each of the claims of the patents sued on, and making such other reference as you wish to any other exhibits in the case.

A. Referring to Number 835,850 granting to M. M. Cohn a patent for an envelope, which appears to have been filed November 8, 1904, and to the patent Number 824,908 to the same patentee, M. M. Cohn, also for an envelope, which is marked "original application filed November 8, 1904, Serial Number 321,886. Divided, and this application filed January 17, 1905"; these two patents each on their face are for envelopes, and the quotation referring to the division of the parent patent Number 835,850 would indicate that a portion of the subject matter of the first patent, the parent patent, was reserved to be the subject matter of a later application which eventually issued as Number 824,908, and being filed January 17, 1905. The parent patent, issued November 13, 1906, states, beginning at line 8, page 1:

"My invention relates to an improved envelope of the type having a generally opaque surface with a more or less limited transparent area for the addressee's name and address to show through.

The object of my invention is to provide an

(Testimony of Frederick E. Maynard.)

unpunctured envelop of this character which shall be simple and cheap to manufacture, practical in every way, and which shall offer novel and unique possibilities for advertising.” [57]

The figures of the accompanying drawing in this patent are described as comprising, first:

“Figure 1 shows an envelop embodying my invention, in which I employ a tinted or colored border around the window-opening to cover up signs of ‘creeping’ or ‘bleeding’ of the preparation into the surrounding body of the paper. Fig. 2 represents an envelop with a different-shaped opening from that of Fig. 1 and in which the entire face of the envelop around the window is assumed to have been imprinted or colored to give definition to the window-opening and obliterate signs of ‘creep’ in the transparency-producing preparation.”

Fig. 3 of the drawing particularly shows a window designated by the reference character 2, in this instance the outline of a pickle, and above—

Q. 7. Just a moment, Mr. Maynard. Is it a fact that the matter of figures 3 and 4 really form the subject matter of the second patent? If so, I would ask you to treat each patent with particular relation to the subject matter covered and claimed by it. Continue your explanation.

A. This figure 3 of the parent patent is actually embodied in the drawing of the junior patent as shown in Fig. 1 of said patent. The parent patent,

(Testimony of Frederick E. Maynard.)

Number 835,850, states in the body of its specifications, beginning at line 39, page 1:

“In carrying out my invention I take a blank sheet of paper or an envelop-blank of suitable strength and texture which is, say, semi-transparent and apply to a portion of one side of the blank, generally on the inside, a preparation which has the property of rendering transparent the portion to which it is applied. The remaining portion or a part of the remaining portion of the blank which forms the face of the finished envelop A is then imprinted with a suitable opaque coloring-matter.”

The patent further states, in line 51: “I employ a compound or preparation, such as paraffin-oil and resin or a grease, which produces the desired result of rendering a semi-transparent paper transparent.” The patentee does not state that he uses any particular or designated compound, and obviously intends that the preparation or compound for producing the effect of rendering transparent the opaque paper of which the envelope is formed may be of any suitable nature. He further states, in line 54:

“This preparation is stamped on or printed on or otherwise applied to the blank to provide the transparency or window of [58] the desired design, and it is applied to such parts of the blanks where the transparency is desired to appear on the face of the envelope and it may cover a larger or a lesser space according to the desired size of the transparency or window.”

(Testimony of Frederick E. Maynard.)

I am reading substantially all of the specification, for the purpose of making clear the reference to the claims which will be made hereafter and which will be better understood by referring to those portions of the specification at the present time.

“Since the oily preparation has a tendency to creep or ‘bleed’ beyond the borders of the space imprinted by the stamp or die by which it is applied, and so possibly stain or discolor the rest of the envelop or give a ragged appearance to the window-opening, it is preferred, even where the paper might ordinarily be deemed sufficiently opaque, to apply some sort of coloring-matter at least around the immediate borders of the transparency. This coloring-matter may be applied solid over the face of the envelop around the window, as in Fig. 2, or it may take the form of graduated tints or of being shaded, or the representation of a surrounding cloud effect, as indicated in Fig. 1. In any event the effect and object of the colored border is to give definition to the window-opening and obliterate or cover up the otherwise rough unfinished outline of the window resulting from the encroachments of the oil or grease or other substance beyond its desired limits.”

In line 85 of page 1 the inventor states:

“Usually, and perhaps preferably, the preparation and coloring-matter are applied on opposite sides of the blank, the preparation on the

(Testimony of Frederick E. Maynard.)

inside and the coloring on the outside.”

Further in line 89, the patent states:

“Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee’s name to appear through is the idea of changing the form or outline of this transparency to correspond with the trademark, design or advertised object of a merchant, manufacturer, advertiser or other person, company or firm.”

This portion or particular paragraph in the specification is further treated more elaborately in the junior patent Number 824,908, and will be considered by me when I come to that patent. It is sufficient to state here, in connection with this parent patent, that the patentee intended to disclose that a particular feature in connection with a window which in general outline is characteristic of a symbol of trade could be used, just as well as an article of manufacture [59] which would be available as an advertising medium. The patent states, in line 15, page 2:

“Where the window-opening is formed by the application of a grease or equivalent compound to the envelop-blank, the colored or shaded borders is essential to the production of a window of properly-defined outline.”

The only claim in this patent Number 835,850 reads as a whole, as follows:

“As a new article of manufacture, an envelop with an unpunctured face of relatively opaque

(Testimony of Frederick E. Maynard.)

stock, said envelop-face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock."

The envelope of exhibit "C" is manifestly one made of opaque stock having an unpunctured face, "said envelop-face having a portion to which a preparation has been applied to render such portion transparent"; this portion of the envelope to which reference is made in this claim is clearly apparent as being the only transparent portion of the envelope, and by examining the inside of the envelope, and particularly, examining the line of contact between the relatively opaque portion of the border of the envelope and that portion which is rendered transparent, a distinct irregular line is found, thus indicating that a material has been applied to the stock of which the envelope has been made, to render a portion of the envelope transparent. Continuing in the claim we find that it calls for:

"A colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock."

The envelope exhibited, and which may well be called the Cohn envelope, in view of its precise conformity to the terms of this claim—

(Testimony of Frederick E. Maynard.)

Mr. SULLIVAN.—I wish to strike out that last statement as a conclusion of the witness.

A. (Continuing.) —has a “colored or tinted border,” precisely [60] as the claim designates, “surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.” A casual examination of the envelope clearly discloses the unsightly effect produced by the irregular line of contact which is the result of the application of the preparation to render transparent the opaque envelope; and unless this irregular disfiguring line were in some wise obliterated, the article would be a rough, unfinished, disfiguring thing. To overcome this unsightliness the patentee has provided for the application of a colored or tinted border to surround said transparent portion, for the very purpose of obliterating or concealing the tendency to creep, of the preparation into the body of the envelope. The object of the invention, as before stated, is to provide an unpunctured envelope of this character which would be simple and cheap to manufacture and particularly practicable in every way. The envelope, exhibit “C,” would be unsightly and disfiguring on account of the impossibility of forming a perfectly symmetrical or regular line of contact between the preparation effecting the transparency, and the body of the border of the envelope. As stated, in any event, the effect and object of the colored border is to give definition to the window-opening and obliterate or cover up the otherwise rough,

(Testimony of Frederick E. Maynard.)

unfinished outline of the window, as stated by the patent. It is clearly apparent that the designer of the exhibited envelope must have had actual knowledge of the Cohn envelope in applying the material to render transparent a portion of the envelope, and also when he designed the pickle-shaped, tinted border to cover the creep of the preparation applied to the envelope. The Cohn patents each disclose a form of window rendered transparent, having a border representing a pickle.

Q. 7. (By Mr. TOWNSEND.) Is it apparent from exhibit "C" on which [61] side of the window the transparency-forming preparation is applied to the face, and on which side the obliterating border is applied?

A. I think I stated in the answer that the preparation to render transparent a portion of the envelope is applied on the inside of the face of the envelope, exhibit "C," and that the colored or tinted border is applied on the outside of the envelope.

Q. 8. Is that according to the directions of the patent or not?

A. Precisely following the terms or specification of the patent.

Q. 9. Do you find then that the defendant has produced any different results or effects from that outlined or claimed in the first patent, 835,850?

A. The defendant has not produced any different effect or result or performed any different method of arriving at a means for covering the line of creep, and has actually applied a preparation to render

(Testimony of Frederick E. Maynard.)

transparent a portion of the envelope to form a window through which the address on an enclosure may be seen, and has also utilized precisely the same instrumentality for covering the creep of the preparation into the body of the envelope as the patent of Cohn sets forth. The means by which this covering of the creepage is obtained being by the application on the outside of the envelope of a tinted border. The patent to Cohn calls for the application on the outside of the envelope upon the border surrounding said transparent portion for the purpose of concealing the effects of the tendency of such preparation to creep.

Q. 10. When you say that the patent calls for that application, do you mean that the description sets forth the application, or does the claim set forth the application of the border on the outside?

A. The specification sets forth the border and it is also an element of the claim.

Q. 11. What I meant was, that while the border is an element of the claim you have stated that the patent claims the application of the border on the outside. Is not that simply set [62] up in the specification as the preferable way of applying the border on the outside of the transparency-produced model on the inside face of the envelope? I call your attention particularly to lines 85 and following, of page 1 of the patent.

A. The specification of the parent patent No. 835,850 as before quoted, states:

“Usually, and perhaps preferably, the prep-

(Testimony of Frederick E. Maynard.)

aration and coloring-matter are applied on opposite sides of the blanks, the preparation on the inside, and the coloring on the outside."

Q. 12. That, you say, is what you find the defendant to have done?

A. The defendant, as shown by exhibit "C," clearly has applied the preparation to render transparent the opaque body of the envelope on the inside of the same, and the defendant's envelop, exhibit "C" also most certainly shows a tinted border, formed particularly in the shape of a pickle as printed on the outside of the envelope.

Q. 13. (By Mr. SULLIVAN.) When you say that the defendant has applied these transparent preparations and when you use that language throughout this entire explanation, you mean that the person manufacturing that envelope has done that, not that the defendant has done it? Because you don't pretend to say that the defendant has manufactured these envelopes?

A. No, hardly that the defendant has manufactured these envelopes, but that the defendant uses these envelopes is shown by that exhibit.

Q. 14. And that the defendant employs the various persons? A. Yes.

Q. 15. (By Mr. TOWNSEND.) The envelope, exhibit "C," as you have stated, contains on the body of the envelope a combination of the claim of this patent 835,850.

A. I have so stated. I find in the envelope marked exhibit "C," all of the claim of the patent No. 835,850

(Testimony of Frederick E. Maynard.)

in precisely the same relation, operating in precisely the same manner or mode to effectuate the single result of obliterating the creeping of the preparation.
[63]

Q. 16. The envelope exhibit "C," then, you say independent of its mode of manufacture embodies those elements of that claim? A. It does.

Q. 17. Now, take up the other patent on the same line, Mr. Maynard.

A. Taking up exhibit "B" patent 824,908, and which has before been referred to as a division of the original patent 835,850, we find that this patent is also for an envelope, and that the object of this patent is stated in line 14 and the following, that:

"The object of this invention is to so design the window-opening and to associate with said window such descriptive matter as will offer novel and unique possibilities for advertising."

The parent patent in its body stated that the envelope as called for might be used as an advertising envelope, and evidently the original claims of that patent included claims for the article as an article of manufacture particularly adapted for advertising purposes.

Q. 18. Just confine your testimony, Mr. Maynard, to the patents before you, not to the cause for the division. Although no doubt your suggestion may be correct, it is not important to the matter immediately in hand.

A. The subject of this particular patent, then, is for the holding to the patentee of an envelope pre-

(Testimony of Frederick E. Maynard.)

pared with a transparent window and bearing such descriptive matter as will form novel and unique possibilities for advertising. The description of the figures in this patent No. 824,908 is "Figures 1 and 2 show my invention in its application to specific brands of goods." The patent then states that the patentee takes a blank sheet of paper or envelope-blank of suitable strength and texture which is, say, semi-transparent—

Q. 19. That descriptive matter then is the same as the descriptive matter which you have taken up and considered in the first patent, is it not? A. Yes.

Q. 20. So just consider in this patent now before you, exhibit [64] "B," the matter which is material to what you say and what the patent says are the novel and unique possibilities for advertising.

A. —thus forming an envelop having a window which may be rendered transparent, and surrounding the transparent window with a border of any suitable outline, and in order to utilize the border of the window opening to the most advantage, he designs to form the border of any suitable outline, and especially in the outline of some symbol of trade or article of manufacture and to associate with this special outline of the border, other advertising matter, the association of which advertising matter and the peculiar outline of the window when associated, instantly calls to the mind of the observer well known firms using the associated outlines and the names which appear on the face of the envelop. The patent, in line 74, states: "Usually, and perhaps

(Testimony of Frederick E. Maynard.)

preferably, the preparation and coloring-matter are applied on the opposite sides of the blanks," as we find them applied on the exhibit "C," "the preparation on the inside and the coloring on the outside" also shown on the exhibit marked "C." Further quoting from the patent we find:

"Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee's name to appear through is the idea of changing the form or outline of this transparency to correspond with the trademark, design, or advertised object of a merchant, manufacturer, advertiser or other person, company or firm."

The exhibit was apparently designed by a person having full knowledge of the Cohn patent.

Mr. SULLIVAN.—One minute; I move to strike that out as being a conclusion of the witness.

Q. 21. Mr. TOWNSEND.—Do you mean that in your opinion that the designer of exhibit "C" had simply the knowledge that everyone is presumed to have of patented articles or that he had before him actual specifications and drawings of the Cohn patents when getting up this exhibit "C"?

A. Unquestionably the designer of the envelop marked exhibit "C" had before him the [65] Cohn patent and saw the pickle outline on the patent in association with the printed name, as he has applied to the envelop exhibit marked "C," the outline of a pickle printed on the outside of the paper, as called for by the specification. The patent states that:

(Testimony of Frederick E. Maynard.)

“The number of shapes this transparency may make is almost limitless. Different people might use an envelope with a window in the shape of an oyster, a fish,” and so on, and in fact different people might use an envelop on which the tinted border was in the shape of pickles of different outlines; that is, the designer of the tinted border might make an irregular, relatively curved form of a pickle, or the designer could use a symmetrical pickle.

Q. 22. Possibly, Mr. Maynard, you would include in the class “pickles” a cucumber? A. Yes.

Q. 23. Whether or not it happened to be specifically so mentioned in the patent?

A. Yes. And if the designer of the envelop proposed to use a pickle outline in the form of the well-known trade symbol used by the Heinz Company and bearing the outline of the Heinz pickle or of the pickle shown on the Cohn envelop, he has still utilized precisely the same means for obtaining the result in advertising. In line 86 the following quotation: “Figure 1 shows a transparency in the shape of a cucumber, the trademark of a well-known manufacturer of a great many varieties of goods.” The envelop marked “C” shows certainly a transparency in the shape of a cucumber which is well known as the trademark of a manufacturer of a great variety of goods, and the patentee has clearly disclosed an envelop having a transparency in the form of a pickle and which is further associated with a pickle-shaped window the fictitious designation “John Doe,” and below the pickle appears the phrase “57 Varieties,”

(Testimony of Frederick E. Maynard.)

thus clearly indicating that the designer of the Heinz envelop marked exhibit "C" was aware of the existence of the patent and probably had it before him in designing the envelop and used to [66] good advantage the trademark in the outline of a cucumber as stated in the specifications. Manifestly the patentee is not confined to the use of a pickle-shaped window nor to the use of a pickle-shaped window of any specific outline; and if the designer of the Heinz patent has proposed to bodily adopt a pickle from the Cohn patent, a slight variation of the outline of the pickle is immaterial. The essential feature, as stated by the patent in this connection is a "window which in general outline is characterstic of a symbol of trade"; and the Heinz envelop marked exhibit "C" bears the well-known symbol of trade in the form of a pickle. The patent states, line 90:

"Fig. 2 shows a cigar in transparency and the words 'Blanco Cigar' in nontransparency on colored opaque field. The number of shapes this transparency may take is almost limitless."

Thus indicating that the patentee was well aware of the unlimited applications and variations to which the outline of the window was adaptable. The patent states:

"Different people might use an envelop with a window in the shape of an oyster, a fish, a cake of soap, and other toilet articles, a cascade, a dress shield, a biscuit, an article of hardware, and other articles of manufacture, and so on in-

(Testimony of Frederick E. Maynard.)

definitely, having due regard for the necessary size of the transparency, so as not in any way to interfere with the clear showing up of the addressee's name inside, the essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By 'symbol of trade' is meant any design such as mentioned above or trademark characteristic of certain goods or the product of a certain manufacturer."

The exhibit "C" certainly then involves a transparent window which is the shape of the symbol of trade here shown as a pickle, of a well-known manufacturer, and which symbol of trade is applied to a great many varieties of that manufacturer. Continuing the quotation from the patent, I find on line 110, page 1:

"when the window-opening is formed by the application of grease or equivalent compound to the envelop blank the colored or stained window is essential to the production of a window of properly defined outline."

On line 5 of page 2, we find: [67]

"I thus produce a most unique and at the same time inexpensive and effective advertising medium. Everyone needs envelops. These advertising-envelops can be made at small expense. They can be made of any shape or size and made to fit the stationary rather than the stationary made to fit the envelop. They can be used not only for mailing, but for sending out circulars

(Testimony of Frederick E. Maynard.)

and the like by messenger. The characteristically-shaped window and the associated letters and colored background constitute a most striking advertisement to attract public attention, the object of all advertising. I do not wish, however, to limit myself in the application of this idea of an envelop having a window which outline is characteristic of a symbol of trade to envelops made originally from non-transparent stock, as above described, for I may employ a transparent stock and form the window opening by printing with or otherwise applying opaque coloring matter to a portion of the envelop."

Further, quoting from line 28, page 2, the patentee states:

"Generally the window-opening by itself alone and unassociated with any descriptive matter or words forming an essential feature of the trademark would have very little significance as referring to a particular manufacturer. For instance, a window in the outline of a bolt might refer to many bolt manufacturers, or a window in the shape of a cigar unassociated with a trade name would be meaningless; but when there is associated with the window-opening of characteristic or peculiar design a trade name or some word or words usually associated with or relating to the pictorial feature, every one seeing the envelop is confronted with a striking advertisement of a particular brand of goods of a particular merchant or firm."

(Testimony of Frederick E. Maynard.)

Attention is directed to the exhibit marked "C," which bears the well-known outline in the form of a pickle, which is instantly associated with the name of Heinz as its well-known trademark, but without the association of the word Heinz on the border of the envelop the pickle-shaped window would be insignificant. And it is therefore the object of the party to associate with the pickle-shaped window some inscription or name so as to instantly direct the mind of the observer to the firm employing that trademark, which is shown here as being the Heinz pickle combination in which the pickle is formed around the opening and the word "Heinz" spread upon the envelop. The specification, line 44, page 2, further states:

"At the same time the envelop not only performs its ordinary function as a closure, but the transparent portion of the envelop allows the name and address on the enclosure to show through, protects the writing thereon, and obviates the necessity for an address on the exterior of the envelop."

Q. 24. Does the defendant's device do that? [68]

A. The defendant's envelope, exhibit "C," performs precisely the same function in precisely the same manner as the transparent portion—allows the name or address printed on the enclosure to show through; the envelope is un mutilated and the transparency is so formed as to allow a ready reading of the address, and is so bound with an outline and provided with a printed designation so that the asso-

(Testimony of Frederick E. Maynard.)

ciation of the outline of the window—in this instance the pickle and the word “Heinz”—will instantly call to mind that the envelope is an advertisement for the Heinz Company, inasmuch as it bears the Heinz pickle-shaped trademark. Referring to the claim, Claim 1 states: “An advertising device comprising an envelope.” I find this element of the claim in its entirety in the exhibit marked “C” of the defendant. Further, the claim calls for “an envelop having a window,” which is clearly shown on the face of the envelop, “through which the addressee’s name on an enclosure may show through through,” and the window is specified in the claim as “being an outline characteristic of some symbol of trade.” The envelop—

Mr. SULLIVAN.—We admit that exhibit “C” does contain those features; that is, that it has “a window through which the addressee’s name on the enclosure may show, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window, and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window.” Is that what you want?

Mr. TOWNSEND.—You concede that the entire combination of Claim 1 is shown in exhibit “C”?

Mr. SULLIVAN.—We concede that the exhibit does show that.

The WITNESS.—(Continuing.) Claim 2, taken as a whole calls for:

“As an advertising device, an envelope hav-

(Testimony of Frederick E. Maynard.)

ing a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of [69] trade, and permanent printed matter on the face of the envelop related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods."

Taking exhibit "C," the defendant's envelop, the envelop comprises "a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through," the window of the envelop here marked exhibit "C" being formed "in general outline characteristic of a symbol of trade"; the exhibit marked "C" in this instance is in the outline of the symbol of trade of the well-known manufacturer, the Heinz Co., this symbol of trade being in the form of a pickle. The pickle-shaped window portion of the envelop is disclosed by the Cohn patent. And further, the claim calls for "permanent printed matter on the face of the envelop related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods." The exhibit "C," then, not only embodies the window having a general outline characterizing a symbol of trade, here shown, as the pickle, illustrated in the Cohn patent, but it also associates with the outline of the pickle the firm name, thus instantly by the association of the pickle outline and the name of the firm, the firm is advertised by reason of the fact that the public mind

(Testimony of Frederick E. Maynard.)

is at once attracted to its well-known trademark. The patent discloses an envelope having a generally opaque face through which an addressee's name on an enclosure may show, and the patent states that the outline of the window may be characteristic of a symbol of trade, and the second claim of the patent also calls for printed matter on the face of the envelop related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods. Manifestly, then, the Heinz Company has utilized this means of advertising by forming in its envelop a transparent window as specified by the Cohn patent No. 835,850, and has associated with the pickle trademark its [70] name for the purpose of arousing the interest of the public.

Q. 24. (By Mr. TOWNSEND.) In exhibit "C" what is the permanent printed matter that carries out the purpose and object of the last-quoted clause of claim 2?

A. In exhibit "C" the printed matter appears in the words on the face of the envelop, "H. J. Heinz Co." and including further matter relative to the return of a letter by the postoffice; and the exhibit also bears on the printed envelope simply the word "Heinz" as would naturally be used by the company for its advertising, in juxtaposition to and in association with the transparent window so that when the envelop has been circulated the word "Heinz" and the outline of the pickle will be apparent and conspicuous.

(Testimony of Frederick E. Maynard.)

Q. 25. Does the placing of the word "Heinz" in exhibit "C" so that it shows inside the pickle convey any different idea or produce any different effect than that conveyed and illustrated in the patent exhibit "B"?

A. The location of the word "Heinz" with relation to the outline, or the pickle outline of the window, simply arrives at the same result, that is, advertisement, and the matter of the location of the word "Heinz" is not specifically defined in the specifications, and the patentee may have applied or printed the word "Heinz" on any portion of the envelop he desired. If the designer of the Heinz envelop disingenuously prints the word "Heinz" on the inside of the envelope and also on the outside of the envelope the words will immediately be associated, when visible, with the pickle-shaped outline. The means for arriving at the result—that is, advertisement—are precisely the same. The patent calls for an opaque envelope having a transparent envelope and in association with said window suitable words, as the name of a firm, and also states that the outline of the window may be shaped into the symbol of trade [71] of a manufacturer. Whether the word "Heinz" is printed at any certain position on the envelop does not affect the results. The instrumentalities for accomplishing the advertising are the same. The patents call for an opaque envelope. The exhibit marked "C" is an opaque envelope. The patents call for a transparent window made by the application of a suitable preparation on the inside of the en-

(Testimony of Frederick E. Maynard.)

velope and also called for a suitably-tinted outline around the transparent window to cover the effect of creep of the material producing the transparency, and the patents, taken as a whole, involve an envelope of this structure, having associated with the particularly-shaped window suitable words so that the association of the two will form an advertising of the firm distributing the envelope.

Q. 26. Referring to exhibit "C," leaving out of consideration for the moment the "return in five days to H. J. Heinz Company" notice, I would ask you if the envelope as presented to you with the word "Heinz" showing on the inside and showing through the transparent window is the equivalent of the illustration, Figure 1, of the patent exhibit "B" where the words "John Doe, 57 Varieties," with the pickle or cucumber are illustrated?

A. Yes. The exhibit "C" is a complete equivalent of the Cohn envelope.

Q. 27. Now, as I understand it, you are omitting for the moment the printed matter from the top which reads "return in five days to H. J. Heinz Company"? Is that correct?

A. That is the printed matter at the left-hand corner of the envelope, exhibit "C," in making that explanation; yes.

Q. 28. That question was independent of that, because you have said that the return mark fills the claim literally, and I am asking independent of that if the use of the word "Heinz" on the inside of the envelope, and showing through the window, is the

(Testimony of Frederick E. Maynard.)

equivalent of the printing "Joe Doe 57 Varieties" or anything else on the face of the envelope?

A. Yes, the [72] exhibit "C" is the substantial and identical equivalent of the Cohn envelope, whether the word "Heinz" is printed on the inside of the envelope so as to be associated with the pickle-shaped window, or whether it was printed on the outside of the envelope. The effect of printing the firm name and using the firm trademark outline is identically the same, the resulting advertisement being the purpose of the Cohn envelope and the purpose of the Heinz envelope, marked exhibit "C."

Q. 29. Do you find, Mr. Maynard, in exhibit "C" a conjoint use of the two patents or of the patented combinations of the claims of the two patents?

A. I do. The two patents in the aggregate called for an envelope so designed as to produce an advertisement. The patent No. 835,850 relates particularly to the structure of the envelope and the transparent window with its tinted border in the shape of the symbol of trade of a firm, and the other patent, No. 824,908, is for an advertising device comprised of the envelope of the patent No. 835,850 and the advertising device of the patent No. 824,908, so that the exhibit "C" of the defendant comprises the joinder of the subject matter of the two patents.

Cross-examination.

(By Mr. SULLIVAN.)

XQ. 1. Will you look at exhibit "C" there and tell me wherein the word "Heinz" appears on the face of the envelope? I am referring, now, particularly

(Testimony of Frederick E. Maynard.)

to the explanation which you gave a moment ago, omitting for the moment from exhibit "C," the printed matter "Return in five days to H. J. Heinz Co.," etc., "Baltimore, Maryland," and referring to your explanation of the word "Heinz" as advertised on the pickle, does that appear on the face of the envelope? By referring to exhibit "C" I am simply referring to the printed matter "H. J. Heinz Co." at the left-hand corner of the envelope. I am omitting that. A moment [73] ago you omitted that from your consideration when you said that the method or the manner of the envelope was similar to that of the Cohn patent. Will you please show me wherein the word "Heinz" appears "on the face of the envelope related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods"?

MR. TOWNSEND.—The witness was referring to equivalency. I don't understand him to have said that if you omit the return notice complete, which appears on the face of the envelope, that the word "Heinz" would appear on the face, but that the appearance of the word "Heinz" on the inside of the envelope would show through the window opening and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods,—that that was the equivalent of the structure literally called for by the claim.

MR. SULLIVAN.—Very well, then. It is conceded that if we omit the word "Heinz Company" and the printed matter at the left corner of exhibit

(Testimony of Frederick E. Maynard.)

“C,” the word “Heinz” does not appear on the face of the envelope?

Mr. TOWNSEND.—That is quite true.

XQ. 2. (By Mr. SULLIVAN.) You understand that these envelopes are supposed to contain letters, bills and so on, so that the letters or bills or whatever the contents may be in that envelope, shall appear between the face and the back of the envelope? Is that correct?

A. I understand that the inclosure would of course be placed inside the envelope?

XQ. 3. Yes, and if placed inside the envelope it would conceal the word “Heinz” on the rear part of the envelope, would it not?

A. It would conceal the word “Heinz” on the envelope only so long as the inclosure was in the envelope.

XQ. 4. Yes, sir. So that while the inclosure was in the envelope the word “Heinz” on the rear part of the envelope would be invisible [74] at all times?

A. The word “Heinz” which was printed on the back of the envelope would be invisible until the contents were removed, but the word “Heinz” as actually printed on the face of the envelope would always be conspicuous.

XQ. 5. Yes, sir. I am not speaking about printed matter, the word “Heinz” on the face of the envelope. I am leaving that out of consideration. The fact is that during no time when the inclosure is in the envelope, the word “Heinz” printed on the en-

(Testimony of Frederick E. Maynard.)

velope would be visible, leaving out of consideration the printing at the left-hand corner of the envelope? Is not that the fact?

A. The word "Heinz" would not otherwise be visible when the enclosure was in the envelope.

XQ. 6. At all times when the enclosure was in the envelope, the word "Heinz" would be invisible except as it appears on the left-hand corner of the envelope?

A. Except as it appears on the left-hand corner of the envelope.

XQ. 7. We have omitted that from consideration for the moment.

A. Of course, anything on the interior of the envelope that is behind the contents would be hidden, but the moment the contents are removed, the word "Heinz" appears so as to be in juxtaposition to the trade symbol outline of the pickle. Of course, it is not on the face of the envelope, but it appears just as plainly as it would if it were printed on the face of the envelope, no matter if it is printed on the inside, at the back of the envelope.

XQ. 8. A moment ago you admitted that it was printed on the back of the envelope. You do not pretend, now, that it is printed on the face of the envelope, do you?

A. Not printed on the face of the envelope.

XQ. 9. Of course, this patent claim Number 2 requires that it should be printed "in juxtaposition with the outline of the window and co-operating with

(Testimony of Frederick E. Maynard.)

said outline to indicate a particular brand of goods.”
Is that correct?

A. Yes, but it [75] does not specify in what form it should be printed. The word “Heinz” might be printed either on the inside or the outside; consequently any printing of the word “Heinz” on the inside of the envelope is covered by the claim of the patent, just as well as if it were printed on the outside. Very frequently large manufacturing companies make paper on which is a water mark, and that water mark appears very close together on the paper, but in this instance the word “Heinz” may be printed anywhere. It may be printed on the outside and it may also be printed on the inside.

XQ. 10. You don’t pretend to say that the word “Heinz” is printed on the face of the envelope that we have here, do you?

A. Certainly, the word “Heinz” is not printed on the face of the envelope.

XQ. 11. By the word “Heinz” I do not mean the words H. J. Heinz Co. It is not printed on the face of the envelope?

A. No, the word “Heinz” is not printed on the face of the envelope except in the left-hand corner where large firms have their return notice on the envelope which is also used for the purpose of advertising.

XQ. 12. I will ask you again because I want to have the matter definitely understood, whether or not the word “Heinz” as it is printed, omitting for the moment the “Heinz Company” notice printed in the left-hand corner is on the face of the envelope, is

(Testimony of Frederick E. Maynard.)
printed on the face of the envelope? Is it printed on the face of the envelope?

A. If you omit anything that is printed on the face of the envelope why it does not appear on the face of the envelope. If you include anything that is on the inside of the envelope, it does appear.

XQ. 13. Does it or does it not appear on the face of the envelope?

A. Omitting the words that are printed there; you will find the word "Heinz" printed on the inside.
[76]

XQ. 14. It does, therefore, not appear on the face of the envelope?

A. Not the single word "Heinz" that is printed on the inside of the envelope.

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 1. Taking exhibit "C," Mr. Maynard,—I hold it before you—I will ask you if it is a fact that there appears "permanent printed matter on the face of the envelope related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods"? and I will cover up the return notice.

A. The word "Heinz" appears on the face.

RDQ. 2. And that is permanent printed matter?

A. Permanently printed on the envelope.

Recross-examination.

(By Mr. SULLIVAN.)

RXQ. 1. Do you want to be understood as testifying that the word "Heinz" is actually printed on the

(Testimony of Frederick E. Maynard.)

face of the envelope?

A. I didn't say that it was actually printed on the face of the envelope. I said that it appeared on the face of the envelope.

RXQ. 2. Yes, but the fact is that it was not printed on the face of the envelope.

A. No; the word "Heinz" is printed on the inside of the envelope.

RXQ. 3. Yes, sir. Therefore, it is not printed on the face of the envelope?

A. No, the word is printed on the inside. The word "Heinz" is also printed on the outside of the envelope.

RXQ. 4. Is the word "Heinz" printed on the outside of the envelope "related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods"? A. The specification— [77]

RXQ. 5. I am not asking you about the specification. I am asking you if the word "Heinz" is permanently printed "on the face of the envelope related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods?"

Mr. TOWNSEND.—You are referring to exhibit "C," introduced in evidence?

Mr. SULLIVAN.—I am referring to exhibit "C."

A. Well, the word "Heinz" is actually printed on the face of the envelope and is associated with the outline.

RXQ. 6. Is it "in juxtaposition with the outline of the window and co-operating with said outline to in-

(Testimony of Frederick E. Maynard.)

dicade a particular brand of goods”?

A. It has a position on the border of the envelope. The word “Heinz” may be placed anywhere on the envelope and still be in juxtaposition to the outline. It could not very well be on the face of the envelope unless it was in juxtaposition, so long as the outline appears on the face of the envelope.

Mr. TOWNSEND.—In your testimony you have referred to a torn envelope, and for the convenience of the Court in seeing the structure of the envelope, I offer this in evidence.

(Two envelopes are produced, pinned together and marked respectively “Complainant’s Exhibit ‘C’ (1)” and “Complainants’ Exhibit ‘C’ (2).” [73])

[Testimony of **Max M. Cohn**, for Complainant
(Recalled—Recross-examination).]

Recross-examination of MAX M. COHN.

(By Mr. SULLIVAN.)

RXQ. 1. Mr. Cohn, had you or not, prior to January 17, 1907, conceived the idea of placing a border around the window of exhibit “C” so as to indicate the business of a person using the envelope?

Mr. TOWNSEND.—We object to that as not proper cross-examination.

A. I had.

RXQ. 2. (By Mr. SULLIVAN.) How long prior to January 17, 1905, had you conceived such idea?

Mr. TOWNSEND.—That is objected to as not proper cross-examination.

A. I can’t state at this time.

(Testimony of Max M. Cohn.)

RXQ. 3. (By Mr. SULLIVAN.) Was it more than a year?

Mr. TOWNSEND.—We object to that as not proper cross-examination, and on the grounds previously stated; also that the witness has stated that he can't remember at this present time.

Mr. SULLIVAN.—I object to counsel putting words into the mouth of the witness. I think the witness is capable of answering for himself.

A. As I stated before, it is impossible for me to tell, at this time, just when the idea was conceived.

RXQ. 4. Was it a day, one day prior?

A. Well, I guess so.

RXQ. 5. A month?

Mr. TOWNSEND.—We make the same objection.

A. At this time I can't give you the exact time. It would be necessary for me to go over the data that I have collated in this matter.

RXQ. 6. (By Mr. SULLIVAN.) Had you prior to November 8, 1904, conceived such idea?

Mr. TOWNSEND.—We make the same objection.

A. Yes.

RXQ. 7. (By Mr. SULLIVAN.) You had? Then, when you testified a moment ago that you didn't know whether it was more than a [79] month prior to January 17, 1905, that you conceived such idea, that testimony was untrue, was it?

A. Not prior to January, 1905; January, 1904.

RXQ. 8. And you said you didn't know. I asked you if you, as a matter of fact, conceived the idea

(Testimony of Max M. Cohn.)

prior to January, 1905, and you testified that you didn't know.

A. I don't think I testified that I didn't know. I said that I could not give the exact time at this time without consulting data that I have in this matter and interviewing some of the witnesses.

RXQ. 9. Was it before or subsequent to the issuance of the British patent that you first conceived the idea of placing around a window of the envelop a border so as to indicate the particular line of business of the user?

Mr. TOWNSEND.—We make the same objection; also that it is not proper cross-examination.

A. As stated before, it is impossible for me at this time to give anything definite in reference to the time of conception.

RXQ. 10. (By Mr. SULLIVAN.) You have data with you, have you, which will give you the time when you first conceived the idea?

A. I have a great deal of matter pertaining to those patents. It will take me a long time to go through it.

RXQ. 11. Yes, and your data will show the time when you first conceived the idea, will it?

Mr. TOWNSEND.—We object to that as not proper cross-examination, not proper matter at this time.

A. I think so.

RXQ. 12. (By Mr. SULLIVAN.) Yes, sir. What form is the data in?

Mr. TOWNSEND.—We make the same objection.

A. Correspondence and memoranda.

(Testimony of Max M. Cohn.)

RXQ. 13. (By Mr. SULLIVAN.) Where was the process of making the envelopes for the patent? Where did it take place?

A. Certain parts of the work were done in one place and other parts in another place. [80]

RXQ. 14. What places were they?

Mr. TOWNSEND.—We make the same objection; not proper cross-examination; irrelevant and immaterial.

A. They were made in the printing office of F. H. Abbott & Co.

RXQ. 15. (By Mr. SULLIVAN.) Where is he?

A. At that time they were located on Battery and Clay.

RXQ. 16. In this city?

A. In San Francisco.

RXQ. 17. Was that the only place?

A. They were also made at the office of Nolan-Davis Co.

RXQ. 18. All in this city?

A. In San Francisco.

RXQ. 19. Those are the only places?

A. Yes, that was where a certain part of the work was done; that is the printing part of it; the printing and application of the transparency.

RXQ. 20. Where was the work of putting the border around the window done?

Mr. TOWNSEND.—We make the same objection.

A. In the offices mentioned.

RXQ. 21. (By Mr. SULLIVAN.) In those two

offices? A. Yes.

Mr. TOWNSEND.—Complainant rests. [81]

[Examiner's Certificate to Testimony of Max M. Cohn.]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I HEREBY CERTIFY that the foregoing depositions were taken in pursuance of the stipulation hereunto annexed, at the place stated in the caption hereof and upon the day set forth in said caption, in my presence and in the presence of counsel for the respective parties to the cause in said caption entitled; that previous to giving their testimony, the said witnesses were by me duly sworn to tell the truth, the whole truth and nothing but the truth in said cause; that said depositions were taken down in shorthand writing under my personal supervision and were transcribed by Brainard C. Brown, pursuant to stipulation and agreement of counsel; that the reading and signing of said depositions were waived by the respective counsel; and that I have retained said depositions for the purpose of delivering the same to the clerk of the court for which they were taken.

Accompanying said depositions and forming a part thereof are the several exhibits introduced in connection therewith and referred to and specified therein.

I further certify that I am not attorney nor of counsel for any of the parties to said cause nor in any way interested in the event thereof.

IN WITNESS WHEREOF I have hereunto set my hand this 11th day of March, 1910.

H. M. WRIGHT,
Examiner in Chancery, U. S. Circuit Court, Ninth
Judicial Circuit, Northern District of California.

[Endorsed]: Published and Filed Jun. 2, 1911.
Southard Hoffman, Clerk. By J. A. Schaertzer,
Deputy Clerk. [82]

[Notice of Taking of Testimony.]

*In the United States Circuit Court for the Ninth
Circuit, Northern District of California.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY, a Corporation,

Respondent.

To the Above-named Respondent, and to Messrs.
Banning & Banning, Its Solicitors.

You will please take notice that I shall proceed to take the testimony of witnesses on behalf of complainant in the above-entitled action, in the above-named court, before the Honorable H. M. WRIGHT, Master and Examiner in Chancery of said court, in his courtroom in the Postoffice Building, Seventh and Mission streets, in the City and County of San Francisco, State of California, on Thursday, the 23d day of February, 1911, at the hour of ten o'clock in the

morning of said day, or as soon thereafter as counsel can be heard.

You are invited to attend and cross-examine.

Dated January 20th, 1911.

CHARLES E. TOWNSEND,

Solicitor for Complainant.

Notice accepted for Thursday, February 23, 1911.

BANNING & BANNING,

For Defendant. [83]

Thursday, February 23, 1911, 10 A. M.

Proceedings had pursuant to the foregoing Notice.

Counsel appearing:

For Complainant, CHAS. E. TOWNSEND,
Esq.

For Respondent, THOS. A. BANNING, Esq.

[Stipulation Concerning Taking of Testimony, etc.]

It is stipulated between the respective parties that the testimony and proceedings in this case may be taken upon a typewriting machine on oral questions and answers, at the offices of Chas. E. Townsend, Esq., 1105 Merchants Exchange Building, City and County of San Francisco, State of California; the witnesses first having been sworn, either by the Master, the Hon. H. M. Wright, or a duly qualified notary public, or other officer competent to administer oaths; said testimony to be taken and received with the full force and effect as if taken directly before the Master or Examiner and in his presence, and by the official reporter and according to the usual procedure.

When the testimony is completed the same is to be promptly returned to the Examiner, for certification

and filing. [84]

By Mr. TOWNSEND.—I offer in evidence the William A. Stickney Cigar Company transo envelop, Complainant's Exhibit "E" for identification, and ask that the same be marked, Complainant's Exhibit "E."

I offer in evidence, the Samuel Jones & Company London, transo envelop, Complainant's Exhibit "F," for identification, and ask that the same be marked, Complainant's Exhibit "F."

I offer in evidence, the prepared transo sheet with the several window portions shown thereon, and previously marked, Complainant's Exhibit "G," for identification, and ask that the same be designated as Complainant's Exhibit "G."

I offer in evidence, the Transo Paper Company's letter of September 22, 1910, to Gabriel Meyerfeld Co., Complainant's Exhibit "I," for identification, and ask that the same be marked, Complainant's Exhibit "I."

I offer in evidence certified copy of abandoned application of George Reese, Serial No. 189,191, filed January 15, 1904, for Improvement in Envelop and Blanks Therefor, Complainant's Exhibit "H," for identification, and ask that the same be marked, Complainant's Exhibit "H."

Written specification and claims of this abandoned application of Reese is as follows, to wit: [85]

**[Specification and Claim of Abandoned Application
of George Reese.]**

TO ALL WHOM IT MAY CONCERN:

Be it known that I, George Reese, a citizen of the United States, residing at Chicago, in the County of

Cook, and State of Illinois, have invented certain new and useful Improvements in Envelopes and Blanks Therefor, of which the following is a specification:

The object of this invention is to produce an envelope having proper means provided in the formation thereof for displaying an address written upon the letter, card, or other article inclosed, so that the address will be legible therethrough without the necessity for providing an additional address upon the exterior of the envelope. The invention consists in so forming the envelope that there will be no necessity for cutting or perforating the blank or material from which it is made, which cutting or perforating would *be* course tend to impair the blank, increase the cost of manufacture of the envelope and waste the portions cut therefrom.

In the drawings illustrating the invention Figure 1 is a plan view of the blank; Fig. 2 a front view of the completed envelope, having therein an addressed letter; and Fig. 3 a reverse view of the folded envelope.

As shown, the envelope is formed from a blank A of any usual and well-known shape and size and said blank consists of a body portion B, having attached thereto side wings C, a lower flap D and an upper flap E, although the envelope may be formed in any other suitable manner [86] and of other suitable size and shape. The body and flaps of the envelope, as shown, are formed of opaque paper of any suitable composition, and within the opaque body of the envelope is located a transparent portion F, which is

formed integral with the substance of the rest of the blank, and said transparent space may be formed either by making the portion of the envelope constituting the transparent space of less thickness than the rest of the blank or by applying an opaquing substance such as ink, paint, or similar material to the rest of the blank, or by applying a substance, such as oil, to the space desired to be rendered transparent. It is preferred, however, to employ the first method and to make the transparent portion of less density or thickness. By making the blank in this manner the completed envelope will be much stronger and more durable than an envelope from which a portion has been cut away, or than an envelope having a transparent paper pasted over an aperture therein. A further advantage will be found from the fact that no raised edges are left around the transparent portion, since the entire blank is formed of a single sheet of paper, and the transparent portion is integral with the remainder. A further advantage in this mode of making the blank lies in the fact that the transparent portion can be formed in the making of the paper in a roll, so that a series of blanks can be cut from a single roll, each blank having suitably positioned, a transparent portion. In this way the operation of forming the blank will be greatly simplified and the cost of making the envelope lessened very materially. [87]

After the blank has been formed, as above described, either by opaquing the body and flaps, or by making a portion transparent by making it of less density than the remainder, or otherwise, the enve-

lope is completed by turning in the side wings and lower flap in the usual manner, leaving the upper flap to be sealed when desired. The letter G, or other article to be inserted, is then inscribed with the desired address H in such position that when folded and inserted the address will be located immediately behind the transparent portion of the envelope, thereby displaying the address there-through. The opaque body serves to conceal all other portions of the letter, making it impossible for anyone to read the contents thereof and allowing the address only to be seen.

What I regard as new and desire to secure by letters patent:

1. As a new article of manufacture, an envelope blank formed of comparatively opaque material, having located therein a transparent portion formed integral with the opaque portion, said transparent portion being located in a position that will permit a blank to be folded into an envelope with the transparent portion occupying the address space of the envelope, substantially as described.

2. As a new article of manufacture, an envelope blank formed of comparatively opaque material, having a transparent portion of less density than the remainder of the blank and formed integral with the opaque material, said transparent portion being located in a position that will permit the blank to be folded into an envelope with the transparent portion occupying the address space of [88] the envelope, substantially as described.

3. As a new article of manufacture, an envelope

blank having a transparent portion formed integral with the remainder of the blank and having the remaining portion of the blank covered with suitable opaquing substance, said transparent portion being located in a position that will permit the blank to be folded into an envelope with the transparent portion occupying the address space of the envelope, substantially as described.

4. As a new article of manufacture, an envelope of comparatively opaque material having a transparent portion formed integral with the opaque material, said transparent portion being located in a position to occupy the address space of the envelope, substantially as described.

6? As a new article of manufacture, an envelope of comparatively opaque material having a transparent portion formed therein integral with and of less density than the opaque material, said transparent portion being located in a position to occupy the address space of the envelope, substantially as described.

7? As a new article of manufacture, an envelope having in its body a transparent portion occupying the address space of the envelope and having the remainder of the envelope covered with a suitable opaquing substance, substantially as described.

GEORGE REESE.

Witnesses:

WILLIAM P. BOND.

WALKER BANNING. [89]

By Mr. TOWNSEND—*MAX M. COHN.*

I offer in evidence as Complainant's Exhibit "J" a

certified copy of the Appeal to the Commissioner and the Commissioner's decision in the matter of the application of Max M. Cohn, filed November 8, 1904, Serial No. 231,886, for "Improvement in Envelop." This decision is as follows:

[Appeal to Commissioner and Commissioner's Decision Re Application of Max M. Cohn, Filed Nov. 8, 1904, Serial No. 231,886 for "Improvement in Envelope."]

UNITED STATES PATENT OFFICE.

Ex parte Max M. Cohn.

Envelopes.

Appeal from Examiners-in-Chief.

Application filed November 8, 1904, No. 231,886.

Mr. George H. Strong and Mr. T. W. Fowler, for appellant.

This is an appeal from the decision of the examiners-in-chief denying the patentability of the following claims:

"1. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelope face having a transparent window and a contrasting border around said window to give definition to the window opening.

"2. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding

opaque stock." [90]

The references are:

Brown, September 9, 1862, No. 36,393;

British patent to Cohn et al., No. 14,478, June 27, 1904;

British patent to Busch, No. 11,876, June 1, 1896.

The nature of the alleged invention is clearly set forth in the decision of the examiners-in-chief in the following language:

"The alleged invention relates to the class of envelopes in which the address is not written on the envelope itself, but on a paper inside the envelope and is read through the transparent surface thereof. The appellant starts with an opaque material and by treating a portion thereof makes a transparent window therein at the point where the address is to appear. It is said that the preparation used in treating the material to make the transparent window cannot be applied in such way as to make a clear cut and regular outline for the window, but will creep and make an irregular and rough outline. To hide this rough outline and leave a transparent window of symmetrical and regular shape the applicant applies a colored border to the surface around the window."

The specification of the patent to Brown states:

"The improvement is to make the envelope or wrapper transparent sufficiently to clearly show the cards of address through it face. There may be only a transparent portion B large enough to exhibit the 'direction' through it; and this may be made either by rendering a portion of

the envelope or wrapper itself transparent by the same means or substances as employed for making tracing paper or any other in the process of manufacturing the paper, or the envelope, leaving the remainder of the envelope opaque. Or a piece of the envelope of the proper size and shape may be cut out of the envelope; and the aperture thus made covered with transparent paper or other equivalent transparent covering."

This case is believed to present invention. The essence thereof is found to lie in the application of a contrasting or colored border around a transparent opening whose edges are of irregular outline in such manner that the border obscures the irregular outline, defines the size of the opening, and makes the article a salable commodity.

The language of claim 1 does not indicate that the transparent opening in the envelope is of irregular outline, or that the border covers any portion of its transparent surface. This claim is not regarded as defining anything patentable [91] over the patent to Brown.

Claim 2, however, defines the invention with sufficient clearness to render it allowable. This claim covers the envelope of opaque material, having a portion to which a preparation has been applied to render it transparent, the transparent portion being of irregular outline due to the spreading or creeping of the preparation used, and a border concealing the irregular outline of the transparent portion of window. While the final result is to enhance the

appearance by concealing the irregular outline, the result is brought about by mechanical features, namely, the application of the printed border to a portion of the paper to which the oily preparation has been applied. The British patents are not regarded as anticipations, as they require, so far as can be understood, that the envelope blank be made from a transparent sheet of paper, while appellant starts with an opaque sheet of paper.

The decision of the examiners-in-chief is affirmed as to claim 1 and reversed as to claim 2.

E. B. MOORE,
Acting Commissioner.

August 1, 1906. [92]

It is stipulated and agreed that "the patent on the Outlook envelop of June 10, 1902, issued to Americus F. Callahan of Chicago," referred to in the letter of Messrs. Banning & Banning, December 16, 1903, to Mr. Regenstein, appearing on pages 18-19 of Defendant's Record, is the Callahan Patent #701,839, dated June 10, 1902, and previously offered in evidence page 372 D. R.

By Mr. TOWNSEND.—I offer in evidence as Complainant's Exhibit "K," British Patent #28,592, A. D. 1904, of George Reese, Improvement relating to envelopes, date of application in the United Kingdom, 28th Dec. 1904, accepted 16th Feb. 1905.

It is hereby stipulated and agreed that the invention described in said British patent is the same invention described in the Reese United States Patent #766,902, Aug. 9, 1904, introduced in evidence by the defendant, that the drawings in the British

and United States patents are identical, and that the only difference between the two patents is with respect to the second claim of the British patent which calls for a series of blanks with transparent portions of less density than the body of the sheet, whilst the second claim of the American patent calls for a sheet adapted for the making of an envelop blank, the sheet having an opaque body with a transparent space, with no reference to density. [93]

**[Testimony of Max M. Cohn, for Complainant
(Recalled).]**

Examination-in-chief of MAX M. COHN, recalled for complainant.

(By Mr. TOWNSEND.)

Q. 1. Mr. Cohn, you are the party complainant who has already been sworn and have testified in this case. Are you not? A. I am.

Q. 2. Are you familiar with the transo envelops known as or like the Transo stock envelop which has been introduced in evidence by the defendant, and with the Heinz envelops, Complainant's Exhibit "C"? A. I am.

Q. 3. Did you ever manufacture or cause to have manufactured any envelops according to either of your patents? A. I have.

Q. 4. Did you ever put any of them into actual use? A. Yes.

Q. 5. When and generally to what extent?

A. In November, 1904, I furnished A. Zellerbach & Sons with 10,000 envelops, all of which were used by them in mailing out bills, statements and correspondence, some being used in San Francisco, while

(Testimony of Max M. Cohn.)

others were mailed to various parts of the United States. [94]

Q. 6. In general, what were the construction and appearance of those envelopes?

A. These envelopes were made from a single sheet of paper, a portion of which had been rendered transparent by having an oily preparation applied to it and a border of opaque ink surrounding this transparent portion, the remainder of the envelop being printed with a light tint, the object of the transparency being to allow the address on an enclosure to show through the window or transparent portion; the object of the border being to define the window or transparent portion and to cover up the effect of the oily preparation which had the tendency to creep or bleed. The general appearance of the envelop was neat and satisfactory.

Q. 7. Who was the inventor of that envelop?

A. I was the inventor.

Q. 8. Will you please state as specifically as you can the origin in your mind of an envelop of that character and its general development by you, giving us the dates and the various steps taken from time to time which led up to your application of the patents here in suit, and the placing on the market and into use of the envelopes in November, 1904, as you have testified.

A. For several years prior to 1902 when I was employed by the Abramson-Heunisch Glass Co., afterward known as the Illinois-Pacific Glass Co., I had been using an envelop manufactured by the

(Testimony of Max M. Cohn.)

Sherman Envelop Co. which had an oval or rather oblong [95] opening with rounded corners. The object of this opening was to allow the address on an enclosure to be visible, and obviated the necessity of writing an address on the envelop. Late in the year 1902 an employee of the San Francisco Postoffice called on me at my office and requested that I discontinue the use of these envelops, stating that they were causing a great deal of trouble in the manipulation of the cancelling machine. I felt very reluctant about giving up the use of these envelops, as I had begun to realize that besides being great labor savers they insured the correct addressing of various bills and communications. Therefore, I gave a great deal of thought as to an improvement. In other words, to get an envelop which would accomplish the same purpose and at the same time be acceptable to the postal authorities. I finally concluded that there were two ways of accomplishing this result. One, by taking a sheet of transparent paper and rendering it opaque with the exception of the space reserved for the address and the other of taking a sheet of opaque paper and rendering it transparent in the portion reserved for the addressing space. Shortly after coming to this conclusion, I began a series of experiments. I encountered very little difficulty in taking a transparent sheet and rendering it opaque in that portion not reserved for the address, but I found a great deal of difficulty in taking an opaque sheet and rendering it transparent in a certain portion. [96]

(Testimony of Max M. Cohn.)

I tried a great many different kinds of paper and a great many different kinds of preparations, but was not satisfied with any of the results obtained. The principal difficulty being that whenever I applied the preparation which in every instance was of an oily nature, I discovered that the preparation had a tendency to spread beyond the limits of space where it was originally applied. After much thought I finally struck the idea of printing a border around the transparent portion, and after that all my experiments included this border, and I have always considered it a very essential feature of my invention. This discovery was made by me some time in the year 1903. This date being indelibly impressed on my memory from the fact that I severed my connection with the Illinois-Pacific Glass Co. on October 15, 1903, in order to take a position with A. Zellerbach & Sons, now known as the Zellerbach Paper Company, I being Secretary of that Corporation at the present time. I had been connected with the Glass Company for eleven years prior to October 15, 1903. Therefore, this was my only change in about eighteen years, and there is no chance for any mistake in date.

For convenience I will refer to the Abramson-Heunisch Glass Co., or Illinois-Pacific Glass Co., simply as the Glass Company, and A. Zellerbach & Sons, or Zellerbach Paper Co., as the Zellerbach Company. [97]

The Glass Company mentioned above maintained a large printing and label department and I made

(Testimony of Max M. Cohn.)

use of this department in my various experiments, up to the time that I severed my connection with them, on October 15, 1903. After I started with the Zellerbach Company I continued my experiments in the office of F. H. Abbott & Company, the printing office situated at that time on Clay and Battery Streets, which was just one block away from the office of the Zellerbach Company.

Q. 9. In your statement just include a detail of what you had done up to the time you left the Glass Company, in October, 1903.

A. My early experiments consisted of taking a sheet of paper and applying various oily preparations with a brush. Later, I applied these preparations with a block of wood and with pieces of rubber. It was then that I found that the oily preparation would spread beyond the size of the block. I remember one instance after applying the oily preparation I took a lead pencil and marked all around the spot made by the preparation and the next day I discovered that the oil had gone over the pencil marks in every direction. After making the discovery mentioned above of printing a border around the transparent portion I consulted with Mr. Epting, an artist in the employ of the Glass Company, and asked him to make a drawing for me from which a zincograph could be made, and I described to him several designs that I had in mind. Among others [98] was a design showing an oblong space surrounded by a cloud effect. I have in my possession an envelop which was made from

(Testimony of Max M. Cohn.)

the original zincograph. This envelop shows that the ink is applied solidly around the space, which is understood to be the space reserved for showing the address, which I will call the window space, and is gradually shaded off. As a matter of fact, I bothered the various employees of the label department to such an extent that I incurred the wrath of the manager, Mr. George Walter, who had charge of all the employees in the label department, and had I not been an officer in the corporation I think he would have kicked me out bodily. After zincographs had been furnished me by Mr. Epting of the label department, I took sheets of paper which I had prepared myself with an oily preparation and had the designs printed around the window space, thus prepared. The first ink that I used did not answer the purpose, and I was obliged to experiment with a great many different kinds of ink before securing one that would answer the purpose.

Shortly before leaving the Glass Company I was introduced to a gentleman named B. T. Bean, a system man from Chicago. He was at that time installing a system for Dunham, Carrigan & Hayden, a hardware concern whose place of business adjoined the Glass Company. Realizing that Mr. Bean was a man of a great deal of experience, also a man who was entrusted [99] with all sorts of business secrets, I spoke to him in reference to my invention and showed him specimens that I had prepared in the manner described above. He was very enthusiastic about the envelop and in reply

(Testimony of Max M. Cohn.)

to my inquiry stated that in his entire experience, which carried him to every part of the United States, he had never seen anything like it, and told me that there would be a great market for an envelop of this description. It was about the time that I had the above interview with Mr. Bean that I made the change from the Glass Company to the Zellerbach Company. I remember this because I suggested to the Glass Company that since they were about to change accountants it would be a good time for them to establish a new system and Mr. Bean coming highly recommended, I considered him a good man to engage.

Recess. [100]

Session Resumed at 2 P. M.

Summing up what I did up to the time of leaving the Glass Company on October 15, 1903, is as follows:

I conceived the idea of making an unpunctured envelop with a window addressing space.

I succeeded in making an opaque sheet, transparent by the use of an oily preparation.

I discovered and applied a printed border around the window addressing space.

I disclosed my invention to a disinterested party.

Very shortly, say within a week or two, after taking up my duties with the Zellerbach Company, I continued my work on this envelop transferring my field of operation to the printing office of F. H. Abbott & Company, because of their close proximity to the Zellerbach Company.

(Testimony of Max M. Cohn.)

After October 15, 1903, all my printing was done at Abbott's office, but I continued to have my drawings and zincographs furnished by the Glass Company, because F. H. Abbott & Company being commercial printers had no art department in connection with their business. From the time I began working with the Abbott Company I started to apply the oily preparation by means of a printing-press. Up to this time I had used a brush or applied it with a block of wood or a piece of rubber, much in the same manner [101] as rubber stamps are used. I encountered the greatest difficulty in finding a suitable material for making the transparent window, and in connection with Mr. Tooker, foreman of the Abbott Company, I worked continuously over a period of a great many months, putting in several evenings, also several holidays and Sundays. I found in some instances where I succeeded in getting a preparation that made an excellent transparency, that it would fade out and become almost useless, said preparations would keep the paper transparent for about a month and then for some reason or other, the paper would become opaque again, and in some instances, this would occur within a very few hours after the preparation had been applied. I kept persistently at work from the time of my conception until about August or September of 1904, when I brought my invention to a state of perfection. It was this time that I placed an order for the Zellerbach Company with F. H. Abbott & Company for 10,000 envelop blanks, such

(Testimony of Max M. Cohn.)

as described above, and I still have in my possession a sample, which I here produce. (Witness produces and hands envelop to Mr. Townsend.)

I also have in my possession an envelop which I here produce which carries the San Francisco postmark dated November 27th, 1 P. M., 1904. This envelop was used to carry a letter addressed to my brother in Manila and was received in Manila as per postmark on the reverse side of this envelop under date of December 28th, 3 P. M. (Witness produces.) [102]

This envelop is an exact fac-simile of the envelop just handed to Mr. Townsend, and is one of the 10,000 lot ordered by A. Zellerbach & Sons from Abbott & Company.

The letter enclosed in this envelop to my brother contained a request for the return of this same envelop, so that I could judge for myself what condition it was in after having gone halfway around the world. I have had this envelop in my possession ever since my brother returned it to me, which was very shortly after its receipt.

Before making these 10,000 envelops, F. H. Abbott & Company printed for me some sample envelop blanks printed from a zinco which was made by the Illinois-Pacific Glass Co. before October 15, 1903. I produce an envelop printed by F. H. Abbott & Company showing the cloud effect and which was printed from a zincograph made by the Glass Co. while I was still in their employ. I personally carried this zincograph, together with several others,

(Testimony of Max M. Cohn.)

from the printing department of the Glass Company to the printing office of F. H. Abbott & Company. (Witness produces.)

I also produce an envelop with the same cloud effect, only that a silver bronze has been applied in the process of printing. This envelop, with the silver cloud effect was produced from the same zincograph as the other cloud envelop just produced with the blue ink. (Witness produces.) [103]

By Mr. TOWNSEND.—I will interrupt the witness one moment to offer in evidence the four envelops to which he has just referred to.

First, I offer in evidence the envelop representing one of the 10,000 printed for the Zellerbach Company in August or September, 1904, and ask that it be marked Complainant's Exhibit "L."

Second, I offer in evidence the envelop of similar character, bearing the San Francisco postmark of November 27th, 1904, and the Manila postmark, December 28th, 1904, and ask that the same be marked Complainant's Exhibit "M."

Third, I offer in evidence the cloud effect envelop printed in blue, and ask that the same be marked Complainant's Exhibit "N."

Fourth, I offer in evidence the cloud effect envelop printed in silver bronze, and ask that the same be marked Complainant's Exhibit "O."

(Witness Continuing:) Going back to the order of the Zellerbach Company to F. H. Abbott & Company for 10,000 envelop blanks, would state that Abbott & Company applied the transparency and

(Testimony of Max M. Cohn.)

printed the border and return card, as shown on the specimens produced, exhibits "L" and "M" on these 10,000 blanks, each blank being made on a separate sheet. [104] These 10,000 sheets were then delivered to the manufacturing department of the Zellerbach Company, and were cut out on an ordinary paper cutting machine in the shape of a diamond. The four corners were then notched by an adjustable punch or die; this adjustable punch or die consisting of four angular blades capable of being shoved together or spread apart. (Witness illustrates his explanation by reference to a diamond-shaped blank envelop similar to exhibit "L".) The blank used by witness in his explanation is offered in evidence as Complainant's Exhibit "P."

(Witness Continuing:) The adjustable die described above, punches out the four corner notches in one operation.

Mr. TOWNSEND.—Please mark by the word "notches" the corner notches you just referred to, making this notation on the unprinted portion of exhibit "P."

(Witness Continuing:) These blanks are then folded and pasted by hand, the Zellerbach Company employing a number of girls to do work of this character.

While working on various styles of envelop blanks I discovered that a good use could be made of the necessary border for the purpose of advertising, and I made a good many specimens of envelop blanks [105] with borders carrying out this conception.

(Testimony of Max M. Cohn.)

I conceived this idea some time in the summer of 1904. To be more specific I will state that this border took on the general outline of a cigar, a pickle or cucumber, a cascade, and other well-known articles. Some time in October, 1904, I took samples of perfectly finished envelops to Mr. Townsend, with whom I had consulted on this subject many months previous, and asked him to prepare a patent application, which he did. This resulted in the filing of the application of my envelop patent, November 8, 1904, and which application resulted in patent #835,850 of November 13th, 1906, here in suit. Almost immediately after instructing Mr. Townsend to file this patent I consulted Barnhart & Swasey, afterward known as the Nolan, Davis Company; they being a firm that made advertising a specialty, in reference to the advertising feature of my envelop. Barnhart & Swasey had a well-equipped art department and printing plant in connection with their business, and immediately realized the value of my invention when I disclosed same to them. They made a great many specimens of various designs, one of which I here produce. (Witness produces.) Unfortunately, almost all the work consisting of four or five completed envelop specimens of different designs and some two hundred sketches made by their artists were destroyed in the great conflagration of April 18th, 1906. [106]

(By Mr. TOWNSEND.)

Q. 10. Referring to this last cigar envelop made by the Barnhart & Swasey Company for you, can you

(Testimony of Max M. Cohn.)

give the date when that was made?

A. Either October or November, 1904.

By Mr. TOWNSEND.—I offer the envelop last referred to, as Complainant's Exhibit "Q"; said exhibit being a folded envelop blank of generally opaque stock with a window portion integral with the body of the envelop, and showing apparently the application of a transparency forming preparation through the window, with a defined border around this window in the shape of a lighted cigar with the smoke of the lighted end of the cigar extending through the generally blue field of the envelop and forming a background for the word "Perfecto," which appears in red ink, above the cigar. Below the outline of the cigar is the word "Cigar" in red *the flank by four matches*; the matches being shown with whitish stems and red heads. On the back of the envelop are the words, printed in red: "Patent Applied For."

Q. 11. Prior to the production of this Perfecto cigar envelop exhibit "Q" had you made [107] any advertising envelops of this sort while working with Abbott & Company, or otherwise, and after you had conceived the idea?

A. Yes. I made some envelops with the border in the shape of a cigar and a pickle at the shop of Abbott & Company.

Q. 12. Was there any printed matter on the envelop in association with the picture or outline of the cigar or pickle which would indicate the particular brand of goods?

(Testimony of Max M. Cohn.)

A. Yes. In connection with the cigar were the words "Cremo" above the outline of the cigar, and the word "Cigar" below. In the case of the envelop showing the outline of a pickle was the single word "Heinz" above the pickle and "57 Varieties" below the pickle.

Meeting adjourned until February 24th, 1911, 10 A. M. [108]

San Francisco, February 24, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

(By Mr. TOWNSEND.)

Q. 13. Mr. Cohn, will you please read over the claim of your first patent 835,850 and state what elements of that claim, if any, are present in these old envelops of yours which have been introduced in evidence, as Complainant's Exhibits "L," "M," "N," "O," "P," and "Q"; and if any elements of the claim are omitted, state what they are.

A. The claim in this patent calls for an envelop with an unpunctured face. All the exhibits referred to are envelops with "an unpunctured face." The claim further states that the envelops are to be of "relatively opaque stock." All of the exhibits show envelops of relatively opaque stock. The claim further states that "said envelop face has a portion to which a preparation has been applied to render such portion transparent." All the exhibits referred to have had a preparation applied to them to render such portion transparent. The claim further states

(Testimony of Max M. Cohn.)

that "a colored or tinted border surrounds said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock." All of the exhibits referred to have a colored or tinted border surrounding the transparent portion, for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding [109] opaque stock. I find no elements of the claim omitted in the envelopes here exhibited.

Q. 14. Are these envelopes, exhibits "L," "M," "N," "O," "P," and "Q," fair samples of the work that you turned out at that time, particularly with respect to transparency and appearance?

A. No. They are not fair samples of the general work that I did at this time, especially with reference to the state of transparency. As a matter of fact, some of the Zellerbach Company envelopes which I herewith present were culled from the lot that I made, on account of not being up to the standard. I had a great many better specimens in my office but these were all destroyed in the disastrous fire of April 18, 1906.

Q. 15. Do I understand that the envelopes that were actually used by the Zellerbach Company in 1904 were even better specimens than these exhibits are?

A. Yes. The envelopes used by the Zellerbach Company in 1904 were perfect in every respect, the address on an enclosure showing very clearly through the transparent portion. They were considered per-

(Testimony of Max M. Cohn.)

fect by everyone who saw them. [110]

Q. 16. You mentioned the name of Mr. B. E. Bean yesterday. Where is Mr. Bean located at present, if you know?

A. Mr. Bean at present is a member of the firm of Klink, Bean & Co., in the Audit and System Business with an office in the Kohl Building, corner Montgomery & California Streets, San Francisco.

Q. 17. Do you know where Mr. Epting is now?

A. Mr. Epting still continues to do artist work in the building used by the Sunset Publishing Company, on Battery near Sacramento Street, San Francisco.

Q. 18. Do you know where Mr. Tooker is located at present?

A. Mr. Tooker is still foreman of the F. H. Abbott Press-room, which is situated on Mission St. near First Street, San Francisco.

Q. 19. You have stated that before you had left the Glass Company in October, 1903, that you had conceived the idea of making an unpunctured envelop, with a window addressing space and of making an opaque sheet transparent by the use of an oily preparation and had applied a printed border around the window addressing space, and that you had disclosed the invention to others. [111] Do you remember whether you made up into an envelop such an oil-treated opaque sheet?

A. I made up several envelops by cutting out the blank with a pair of scissors and pasting it by hand.

(Testimony of Max M. Cohn.)

Q. 20. State whether or not; such hand-made envelop embodied the elements set forth in the claim of your first patent, here sued on.

A. It embodied every one of the elements in the claim present in suit.

Q. 21. Can you produce any of those early hand-made envelops? A. I cannot.

Q. 22. For what reason?

A. They were also destroyed in the fire. I wish to explain here that owing to having a sick child I was unable to leave home at the time of the fire and did not get down town until my office was entirely destroyed. It was therefore impossible for me to save anything of value.

Q. 23. You have stated that in your efforts to get up a one-piece envelop with a transparent window that would be acceptable to the postal authorities that you "finally concluded that there were two ways of [112] accomplishing this result. One by taking a sheet of *transparent paper* and rendering it opaque with the exception of the space reserved for the address, and the other by taking a sheet of *opaque paper* and rendering it transparent in the portion reserved for the addressing space." As I understand it, you have developed in your testimony thus far the second feature above: that of taking an opaque paper and rendering it transparent in the portion reserved for the addressing space which culminated in the exhibit envelops herein introduced, and in the filing of the application for the patents on which this suit is based.

(Testimony of Max M. Cohn.)

What did you do, if anything, towards developing the other idea of starting with a sheet of *transparent paper* and rendering it opaque with the exception of the space reserved for the address?

A. I made up some hand-made envelops, using transparent paper and printing the same with opaque ink over the entire surface with the exception of the addressing space, and applied for a patent, said application being filed in the Patent Office on May 9, 1904, Serial No. 207,082. I also applied for a patent in Great Britain, application reaching the British Patent Office June 27, 1904. In this British application I was joined with John Charles Shipp. The application of the United States patent [113] resulted in a rejection. The British patent was granted, and is numbered #14,478, A. D. 1904. I discovered, however, that the envelops made by this method were not satisfactory or merchantable, firstly, on account of the transparent paper I was compelled to use was of a very brittle character, and had a tendency to crack; secondly, it was very difficult to seal envelops of this character, the gum used in the ordinary envelop not adhering to the smooth surface of the transparent paper; thirdly, stamps would not adhere with sufficient strength to the smooth surface of the paper. The envelops produced by this method had the similar appearance to the imitation Busch envelop, introduced by the defendant, opposite page 400 in the defendant's testimony. Considering all the objectionable features I abandoned the idea of manufacturing envelops of this character.

(Testimony of Max M. Cohn.)

Q. 24. Have you a specimen envelop such as you have just mentioned which you made of transparent paper?

A. I have, and herewith produce same. (Witness produces.)

By Mr. TOWNSEND.—This envelop submitted by witness is here offered in evidence as Complainant's Exhibit "R." Counsel further states that if called and sworn [114] he would testify that this particular envelop Exhibit "R," has been in the original file in his office continuously from a date earlier than November 4, 1904, which is the date of the amendment addressed to the Patent Office in the matter of the said abandoned application M. M. Cohn, Ser. No. 207,082, filed May 9, 1904, though how much earlier than Nov. 4, '04, he is unable to state, and that to the best of his recollection and belief the sample envelop filed with the Patent Office at that time is a duplicate of the specimen, exhibit "R."

Counsel would also state that he has in his possession a certified copy of the file wrapper, contents, and drawings in the matter of said abandoned application #207,082, which he herewith tenders counsel for defendant in case counsel for defendant wishes to introduce said file in evidence.

By Mr. BANNING.—After comparing the specification of the British patent #14,478, of 1904, Cohn et al., with the specification of the abandoned application ser. No. 207,082, filed May 9, 1904, and the drawings of said British patent with the drawings of said abandoned application, it appears that the speci-

(Testimony of Max M. Cohn.)

fications and drawings of such British patent and of such abandoned application are substantially identical—disregard being had to the fact that in the British patent the plural is used, while in the abandoned application the singular is used to designate the applicants. [115] And disregarding also certain amendments made to the specification of such abandoned application during its pendency in the United States Patent Office, and the claims of the British patent, and those filed with the abandoned application.

(By Mr. TOWNSEND.)

Q. 25. Can you fix the time that this transparent sheet envelop exhibit "R" was made by you?

A. I cannot fix the exact date, but feel reasonably certain that it was made at about the time application was filed for the United States patent.

Q. 26. Which application?

A. Application filed May 9, 1904, Ser. No. 207,082.

Q. 27. You have stated that the paper used in making this exhibit "R," being so brittle, would break, and the difficulty in making the stamp and paste adhere. Were there any other difficulties in the way of this being a practical commercial envelop?

A. Another difficulty toward making this envelop a success was the fact that a very dark colored ink had to be used in order to make the transparent paper sufficiently opaque, and many firms would dislike using an envelop of this character. [116]

Q. 28. Would that objection, or any of these objections that you have mentioned apply to the so-

(Testimony of Max M. Cohn.)

called Busch sample, opposite page 400 of the defendant's record?

A. All of the objections mentioned would apply to the so-called Busch envelopes mentioned, with the further objection that by putting an enclosure in envelop marked "No. 1," of the so-called Busch envelop opposite page 400 in defendant's testimony, would give it the appearance of a "mourning" envelop, giving it the exact appearance of the popular mourning stationary. This would certainly preclude their use for any business purposes.

Q. 29. Referring to the transparent paper envelop "R," if the paper you used was brittle and had a polished glazed surface, which was abhorrent to paste and mucilage, why not use other forms of transparent paper?

A. The only other form of transparent paper, aside from tissue paper, which would be entirely useless in the manufacture of envelopes, is tracing paper. Tracing paper is also rather brittle, but the main objectionable feature in the use of tracing paper is the cost of same. Tracing paper is one of the most expensive papers on the market. The cost of tracing paper would prohibit its [117] use, in the manufacture of commercial envelopes.

Recess.

To be more exact, the cost of the paper alone, if tracing paper were used, in making envelopes, would be from \$5.00 to \$10.00 per thousand. This price does not include printing or manufacturing the en-

(Testimony of Max M. Cohn.)

velops, and as good commercial envelops can be sold for less than \$1.00 per thousand, it is very evident that no successful envelops can be made from tracing paper. One of the reasons that tracing paper is so expensive it has to be made so that a draftsman in using it can apply ink on its surface by the use of a pen, or other drawing instruments. Therefore, tracing paper cannot be made out of an oily preparation. One other objectionable feature to tracing paper is that it lacks sufficient transparency to make an address very clearly legible through same.

By Mr. TOWNSEND.—I offer in evidence the piece of tracing paper used by the witness in his last answer, and ask that the same be marked Complainant's Exhibit "S."

Q. 30. What is the objection to using tissue paper or some other form of transparent paper for envelops of this character? [118]

A. Everyone knows that tissue paper could not be used in making a commercial envelop; one of the functions of an envelop being to protect the enclosure. Tissue paper would tear too easily for this purpose. I know of no other transparent paper that would be suitable for making envelops.

Q. 31. As a general proposition does the ordinary commercial tissue paper or transparent paper have sufficient inherent rigidity or stiffness to make it suitable or practical for envelops, especially those that are to be used for mailing purposes?

A. No. They are of a very flimsy character, especially so when there is no enclosure in them to

(Testimony of Max M. Cohn.)

stiffen them up. It would be impossible to make salable envelopes out of any transparent paper now in the market.

Q. 32. In answer to Q. 23, you say you made up some hand-made envelopes using transparent paper, and printing the same with opaque ink. State how exhibit "R" was made and if that was a hand-made envelope or not.

A. Exhibit "R" was made by taking a piece of transparent paper and printing from a zincograph with an opaque ink. The sheet thus prepared was cut out and notched in the same manner as described with reference to exhibit "P," and then pasted by hand.

Q. 33. That is what you meant by a hand-made [119] envelope in your answer to Q. 23?

A. Yes. Any envelope folded and pasted by hand is considered a hand-made envelope, as distinguished from those that are folded and pasted by machinery.

Q. 34. Is this exhibit "R" the first of the specimens you made of this type of envelope; or had you embodied this idea in concrete form in any way before you produced this particular specimen exhibit "R," which shows the return address of the Illinois-Pacific Glass Company?

A. My recollection on this envelope is not so clear on account of the early abandonment of this idea. I think, however, that before producing this particular envelope I made some with a solid block not showing the return card as is shown on the exhibit "R."

(Testimony of Max M. Cohn.)

Q. 35. Was this envelop exhibit "R" a commercial success?

A. No, it was not, and I made no attempt to place them on the market, either in this country, or anywhere, and have allowed my British patent to lapse, for nonpayment of annuities under the English law.
[120]

Q. 36. Referring to your envelopes from opaque stock, represented by exhibit "L," did you encounter any difficulty in the way of overcoming the objection to the oily preparation creeping into the body of the opaque stock? A. Yes.

Q. 37. What were they, and how did you solve the problem?

A. I had a great deal of difficulty in getting a suitable ink to overcome this objectionable feature. I experimented with all manners of ink that I could find in the market, without success.

Q. 38. Please state first what you did to overcome the objection of the creep of the oil into the opaque stock; in other words, what is it appearing upon your envelop exhibit "L," that is designed primarily to overcome that objection?

A. I printed a border around the space that was treated with the oily preparation. As explained in my former answer I had great difficulty in getting a suitable ink for this purpose, as the oily preparation had a great tendency to come through almost any ink that I used, and finally I had a special ink manufactured for this purpose. I think that Mr. Regenstein, who appears to be the real defendant in

(Testimony of Max M. Cohn.)

this case, must have experienced the same difficulty.
[121]

Q. 39. Have you any tangible evidence to substantiate your belief as to the difficulties met by Mr. Regenstein?

A. Yes. I have in my possession envelopes manufactured by the Transo Paper Co. as late as 1906 and 1907 which show that even at that late date Mr. Regenstein had not solved this problem, as the oily preparation can be clearly seen through the ink that he used in making his border. (Witness produces a bunch of envelopes.)

By Mr. TOWNSEND.—I offer herewith in evidence, as Complainant's Exhibit "T," a bunch of envelopes, ten in number, just referred to by the witness; these envelopes all bearing the imprint "Transo" on the interior tinted surface and with one exception, having the Transo Paper Company's name, address and the words, "Pat. Aug. 9, 1904," on the back; the exception being the case of the Mandel Bros. envelop which instead of having the Transo Company's name on the back, is marked, "Damerson-Pierson Co. Ltd. Licensee, New Orleans, La." On the face of the several envelopes appears the return cards of the following parties and post-office cancellation stamp:

The Ford & Johnson Co., Chicago, Ill. Postmark,
Chicago, Ill. Oct. 3, 1906.

Standard Paper Co., Milwaukee, Wis. Postmark,
Milwaukee, Wis. Dec. 3, 1906. [122]

(Testimony of Max M. Cohn.)

Lee McDonough, Waukegan, Ill. Postmark, Waukegan, Ill. Dec. 3, 1906.

Reid, Murdoch & Co., Chicago. Postmark, Chicago, Ill. Dec. 5, 1906.

Standard Oil Co., Chicago, Ill. Postmark, Chicago, Ill. Dec. 12, 1906.

Amberg File & Index Co., Chicago, Ill. Postmark, Chicago, Ill. Dec. 31, 1906.

John Sexton & Co., Chicago, Ill. Postmark, Chicago, Ill. Apr. 20, 1907.

Illinois Stationery Company, Rockford, Ill. Postmark, Rockford, Ill. Apr. 24, 1907.

Mandel Brothers, Chicago, Ill. Postmark, Chicago, Ill. Jun. 15, 1907.

F. G. Diefenbach, Grocer, Blue Island, Ill. Postmark, Blue Island, Ill. Oct. 3, 1907.

Q. 40. Have you any other early specimens of the Transo Company's envelops?

A. Yes. I have an envelop made by the Transo Company for Montgomery Ward & Company of Chicago, bearing their card, and the postmark, "Chicago, Ill. Jun. 20, 1907." (Witness produces.)

Q. 41. What is there peculiar about that Montgomery Ward envelop, if there is anything peculiar?

A. The peculiarity of this envelop is that the border and tint block are both applied on the same side of the paper, and in this way it differs from the general style of Transo envelop. It is very evident that the border, tint block and advertising matter [123] were printed with one operation, and in this respect it is exactly identical with the Zellerbach

(Testimony of Max M. Cohn.)

Company envelop made by me and described as exhibit "L."

By Mr. TOWNSEND.—I offer in evidence the Montgomery Ward & Co. envelop last referred to, and ask that it be marked, Complainant's Exhibit "U."

Q. 42. Referring to the enclosure which appears in your envelop exhibit "L," bearing the address, "A. B. Adams, Boston, Mass.," will you explain with reference to that particular enclosure.

A. This enclosure is a blank statement form printed for the Simplex System Company of San Francisco, and bears the quotation, "Modern Methods." This statement form was to be used in connection with my patented system called, "Combination Statement and Collection Record"; application for said patent being filed in the United States Patent Office, May 5, 1904, and bears Ser. No. 206,481, patent issued to me, under date of March 21, 1905, #785,291; said patent showing drawings in almost the exact duplicate of this statement. The arrangement of the addressing space on this statement is purposely made to fit the envelops, as described in exhibit "L." The arrangement of this statement is considerably out of the ordinary.

Q. 43. Would the address, "A. B. Adams," etc., [124] on this statement, or any other address appearing on the statement in the place reserved for the address, be visible through the window of the Transo envelop, for instance, if this statement was placed in a Transo envelop?

(Testimony of Max M. Cohn.)

A. If this statement was placed in a Transo envelop, the entire address would not show, and part of the printed portion, that is not supposed to appear in the addressing space, would be plainly visible.

By Mr. TOWNSEND.—I offer the patent last referred to by the witness, #785,291, March 21, 1905, application filed May 5, 1904, for Combination Statement and Collection Record, Max M. Cohn, as Complainant's Exhibit "V."

Q. 44. Is there any connection between this statement blank just referred to, and your envelop exhibit "L"?

A. The connection between the statement and envelop is that the manner in which the statement is folded shows that it was to be used in connection with my envelop exhibit "L," because statements folded in opaque envelops are never folded with the address [125] on the outside, and the statement folded in the manner described will not fit any other transparent window envelop, on the market. This proves that I had this envelop in mind when I designed this statement and had the drawings prepared for the Patent Office. I wish to explain further that the statement referred to has been in the possession of Mr. Townsend, my Patent Solicitor and Patent Attorney, and he has taken same from the original files in his office.

By Mr. TOWNSEND.—Counsel for complainant states that if called and sworn he would testify that this statement has been continuously in the file of the Cohn Abandoned Application Envelop Ser. 207,082,

(Testimony of Max M. Cohn.)

filed May 9, 1904, from some time in the year 1904, and from a date earlier than November 4, 1904, but how much earlier I am unable to state, the date of the amendment, previously referred to. Counsel would further state that these old files of the Cohn cases along with other cases in his office at the time of the fire were saved by him personally; our offices being located then in the Clark Building, 330 Market Street, corner of Front and Battery Streets. At the request of Mr. Cohn to examine our original office file wrapper for his application for patent on "Statement and Collection Record," and which resulted in the aforesaid Patent #785,291, to see if the same contains any samples of statements [126] similar to the one just referred to, I would say that I have examined said file and find some old specimen papers and statements from which the original drawings for the patent #785,291 were made, and these papers are now offered in evidence as Complainant's Exhibit "W."

Q. 45. In answer to Q. 19 you stated that before you left the Glass Company in October, 1903, you had made up several envelopes by cutting out the blank with a pair of scissors and pasting it by hand. Did you show such hand-cut, hand-pasted envelopes to anyone at that time? A. Yes.

Q. 46. Can you mention the name of anyone to whom you showed them?

A. I know that I showed them to Mr. Bean, as previously stated.

Meeting adjourned until February 25th, 1911, 10 A. M. [127]

(Testimony of Max M. Cohn.)

San Francisco, February 25, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

By Mr. COHN.—I have gone over the testimony given yesterday, and would like to supplement to my answers to Q. 20, Q. 21, and Q. 22, and also Q. 45 and Q. 46, referring to the envelops made while I was still connected with the Glass Company, which were cut out with a pair of scissors and pasted by hand, by adding the statement that I am not positive that I retained these samples up to the time of the fire, and there is a possibility that I may have destroyed them before that date. I worked persistently and continuously on this envelop from the time of the conception of my idea up to the time of filing my patent, and during this period I accumulated a vast number of specimens, some of which I destroyed from time to time. I do know positively, however, that I had a great many specimen sheets and envelops that were burnt up at the time of the fire, April 18th, 1906. The envelops entered as exhibits by me are those taken from Mr. Townsend's files, some that I had at my home, which was not burned, and the particular sample marked exhibit "M," which [128] bears the postmark Nov. 27, 1904, I carried in a pocket-book, and had same on my person at the time of the fire.

Q. 47. When did you first learn of the Transo envelop, or Mr. Regenstein?

A. Either in the spring or summer of 1905. My attention being attracted to this envelop by seeing

(Testimony of Max M. Cohn.)

them come through the mail to the Zellerbach Company, with whom I was connected.

Q. 48. Did you ever have any negotiations with him in regard to your device?

A. Yes. Very shortly after seeing the envelopes mentioned above, I communicated with Mr. Regenstein, calling to his attention the fact that I had envelopes of the same character as the ones that he was manufacturing, and that I had a patent pending in the Patent Office of the United States. I called his particular attention to the advertising feature and suggested to him that it might be well for us to get together in some way in the manufacture and marketing of these envelopes. I received a reply very promptly from Mr. Regenstein in which he wanted a little more information as to the character of my envelop and the method of producing same; he being particularly anxious to know if he could not cheapen the production of envelopes of this character. I remember very distinctly that we exchanged four or five [129] letters, all of which I had carefully filed away, but unfortunately, these letters were also burned up in the fire of April 18, 1906.

Q. 49. You say that you called Mr. Regenstein's attention to the fact that you had envelopes of the same character as his, and that you had a patent pending. What envelopes of yours do you refer to, and what application do you refer to?

A. I refer to the envelopes which were made with an unpunctured face of relatively opaque stock, and treated with a transparency forming preparation the

(Testimony of Max M. Cohn.)

same as exhibit "L"; also the envelop with the advertising feature of the same character as exhibit "Q." The application I refer to was the one filed November 8, 1904, Ser. No. 231,886, which resulted in patent #835,850.

Q. 50. Do you recall the time of this correspondence with Mr. Regenstein?

A. My correspondence began either late in the spring or early in the summer of 1905.

Q. 51. You say that Mr. Regenstein wanted a little more information as to the character of your envelop, and the method of producing same. Did you give him such information? [130]

A. I did. About September 2, 1905, I sent Mr. Regenstein samples of the various envelops that I had produced up to that time. Realizing the importance of this step, I registered this communication, which included the samples.

Q. 52. How do you fix that date?

A. I still have in my possession the registry return receipt, which is dated September 6, 1905, at Chicago, Illinois, and signed by Julius Regenstein. This receipt I carried in the same pocket-book with the envelop exhibit "M." I herewith produce this receipt. (Witness produces receipt.)

By Mr. TOWNSEND.—The registry return receipt referred to by the witness is offered in evidence as Complainant's Exhibit "X." This receipt bears the Chicago postmark September 6, 1905, and the San Francisco postmark of its receipt back dated Sep. 9, 1905.

(Testimony of Max M. Cohn.)

Q. 53. What were the contents of your registered letter for which exhibit "X" was the receipt?

A. I remember very distinctly that [131] I sent Mr. Regenstein a sample envelop such as used by A. Zellerbach & Sons, which is the same as exhibit "L"; also a sample of an envelop showing the border around the transparency in the shape of a cigar, a pickle and a cascaret, or rather a series of four cascarts side by side. I explained to Mr. Regenstein that I thought this advertising feature would help the sale of this character of envelop very materially, as it was a novelty, and that this element was always sought by firms who did a great deal of advertising.

Q. 54. Were there three separate advertising envelops? Is that what you mean by referring to the pickle-shaped, cigar-shaped, etc.?

A. Yes. Each design mentioned was on a separate and distinct envelop.

Q. 55. Did any of those samples bear any resemblance to any of the exhibits now before you, aside from exhibit "L," which you have just mentioned?

A. Yes. They resembled exhibit "Q."

Q. 56. In what way was the pickle one like exhibit "Q"?

A. The envelop which had the pickle design [132] had a green border with the word "Heinz" printed above the pickle and "57 Varieties," printed below the pickle.

Q. 57. Describe the cascaret envelop.

A. The cascaret envelop was made by using a design which represented four cascaret tablets, placed

(Testimony of Max M. Cohn.)

end to end, with the word "Cascarets" printed above this design, and the motto "They work while you sleep," below the design. The transparent addressing space showed inside the outline of the four cascade-carets.

By Mr. TOWNSEND.—The witness in his explanation has made a sketch which is offered in evidence as Complainant's Exhibit "Y."

Q. 58. Were these samples which you sent Mr. Regenstein at that time actual one-piece envelopes showing the several designs mentioned, or were they merely drawings, or sketches indicating the idea of an envelop for a pickle or cigar or cascade-caret or fragments of envelopes suggesting such a design? [133]

A. These specimens referred to were complete envelopes in every respect; the printing on same having been done on a printing-press and were not color sketches or fragments of envelopes, as Mr. Regenstein testified was his recollection in answering Q. 176 on pages 63 and 64 of the defendant's testimony.

Q. 59. Did you get any reply from Mr. Regenstein in answer to that registered letter, and if so what did it say?

A. I have a very distinct recollection of the contents of the letter which Mr. Regenstein sent me in reply to my communication enclosing the samples above referred to. He stated that he had just severed his connection with a concern that made a specialty of color work; that he was tired of satisfying cranks and that he did not care to engage in any business except that of making ordinary envelopes. He

(Testimony of Max M. Cohn.)

stated further, and I will try to use his exact language, "I have a patent and you have not." He further expressed his doubts as to my being able to cover my invention with a patent, and practically turned down a proposition of any sort. The letter above described was received by me some time in September, 1905, and was burnt up by the fire of April 18, 1906. I had no further correspondence [134] with Mr. Regenstein until United States Patent #835,850 was granted, dated November 13, 1906, and very shortly after I heard of the issuance of this patent I wrote to Mr. Julius Regenstein, under date of December 4, 1906, and I still have the original carbon copy of the letter sent him at that time, and I herewith produce same. (Witness produces letter.)

Q. 60. Do you know what patent was referred to in Mr. Regenstein's statement, "I have a patent and you have not"?

A. I have no doubt that Mr. Regenstein referred to the Reese patent #766,902, dated August 9, 1904, which is the patent date appearing on all envelopes put out by the Transo Paper Company, which I understands is the company that Mr. Regenstein is connected with.

By Mr. TOWNSEND.—I ask that the carbon copy of the letter last referred to by the witness be copied into the record, and the same is as follows:

(Testimony of Max M. Cohn.)

12/4/06.

Mr. Julius Regenstein,
Chicago, Ill.

Dear Sir:—

I beg leave to refer you to U. S. Patent #835,850, Nov. 13, 1906, issued to me and to invite you [135] to resume with me the negotiations heretofore suspended by reason of your doubts concerning the patentability of my invention.

It is important that this matter be given your earnest attention at once, for, now that the delays of the Patent Office are over, I propose marketing my envelopes, and must soon know whether arrangements with you are to be made.

Of more importance still is the fact that the envelopes you are now manufacturing, a sample of which I enclose is an infringement of my patent as you will see by reference thereto.

As matters of this kind can be gone into much more satisfactorily in personal interviews, I believe it would be to your interest to come to San Francisco immediately, so that we may go over the matter thoroughly.

Please advise me at once whether I may expect you in connection with the above matter.

Sincerely yours,"

Q. 61. In the above letter you refer to a specimen envelop enclosed. What was the character of that specimen if you recall?

A. It was a regular stock envelop of the Transo Paper Company bearing the imprint, "Pat. Aug. 9, 1904," and of the same general character as the bunch

(Testimony of Max M. Cohn.)

of envelopes entered as exhibit "T." [136]

Q. 62. Did you receive a reply to that letter?

A. I did. I received a letter from Mr. Julius Regenstein, dated Chicago, December 10th, 1906, and have the original letter in my possession, and now produce same. (Witness produces letter.)

By Mr. TOWNSEND.—I ask that the letter just referred to be copied into the record; said letter being as follows:

"TRANSO PAPER COMPANY.

Makers of

TRANSO

Envelopes

148 East Division St.

Phone North 1015.

Chicago, Dec. 10, 1906.

Max W. Cohn,

416 Jackson St.,

San Francisco, Cal.

Dear Sir:

I have your favor of Dec. 4th and in reply wish to state that we have made envelopes with a ring to cover the spreading of the oil, at least one year before you handed in your application. The idea, therefore was [137] not at all novel and was very old as far as we were concerned.

It is very true that you have a patent which I could have obtained if I cared for it. This feature of a ring is very immaterial and we never considered it of very much consequence. We have made very successful experiments in making envelopes without a

(Testimony of Max M. Cohn.)

ring, and expect to have nothing else in the future, on the market, but such envelopes as mentioned. We take pleasure in enclosing you a very good envelope which has no ring. If you have anything to offer which is new, and of advantage to us, we would like to hear from you.

Yours very truly,

(Signed) JULIUS REGENSTEIN."

MK. JR.

Q. 63. This letter is apparently addressed to Max W. Cohn. Who is Max W. Cohn?

A. This was evidently an error on part of the stenographer, the letter was undoubtedly intended for me as it refers to a letter written by me under date of December 4th, 1906, which is the letter already copied in the records, and I received the letter in due course.
[138]

Q. 64. In this letter of December 10, 1906, of Mr. Regenstein's, he says, "We have made envelopes with a ring to cover the spreading of the oil, at least one year before you handed in your application." In your correspondence in 1905 with Mr. Regenstein had he said anything about how long he had had the ring, or about its importance or nonimportance?

A. He made no mention of the ring in any of his previous letters.

Q. 65. Mr. Regenstein also says, "This feature of a ring is very immaterial and we never considered it of very much consequence. We have made very successful experiments in making envelopes without a ring and expect to have nothing else in the future on

(Testimony of Max M. Cohn.)

the market but such envelopes as mentioned.” Have you ever seen any Transo envelopes without a ring?

A. I have not.

Q. 66. However, Mr. Regenstein says that he encloses you, “a very good envelop which has no ring.” Did you receive such an envelop?

A. I did with the letter and now produce same. (Witness produces.)

Q. 67. In your opinion, state whether or not [139] that is a Transo envelop.

A. My opinion as to the envelop referred to is that it is not a Transo envelop. It is made in an entirely different manner than the regular stock Transo envelop and I feel reasonably certain that this envelop was not produced in the United States. It has all the appearances of a foreign-made envelop.

Q. 68. Did you have any further correspondence with Mr. Regenstein?

A. Yes. On December 17th, 1906, I replied to Mr. Regenstein’s letter of December 10th, 1906, and have in my possession the original carbon copy of my reply.

By Mr. TOWNSEND.—I ask that the letter just referred to be read into the record; said letter being as follows:

“12/17/06.

Julius Regenstein, Esq.,

Chicago, Ill.

Dear Sir:—

Your letter of Dec. 10th with its enclosure is at hand. From it, I note your rejection of my offer to

(Testimony of Max M. Cohn.)

co-operate in the manufacture of envelopes under my [140] patent and shall be guided accordingly.

It is my purpose to fully protect my patent, and I therefore require that you refrain from all infringement thereof.

Yours truly,"

Q. 69. Do you agree with Mr. Regenstein's statement that the feature of a ring is very immaterial and of no consequence? A. I do not.

Q. 70. For what reason?

A. I consider the ring of utmost importance, for the reason that it was this feature that made the one-piece, unpunctured, window envelop a commercial success; no one-piece envelop having been used commercially before I put out my envelopes with a ring or border in November, 1904. Ever since that date the envelop seems to be gaining in popularity and even as late as to-day, notwithstanding the present suit I received a communication from the Panama Pacific International Exposition, which was enclosed in one of the Transo envelopes. I might take this occasion to state that this envelop which I now produce is a far superior specimen to the bunch previously produced and marked [141] exhibit "T," but it shows the border around the transparency as a prominent feature and would indicate that Mr. Regenstein has at last solved the problem of being able to print a border which will obliterate the objection of the transparency forming preparation creeping into the surrounding opaque stock.

By Mr. TOWNSEND.—I offer in evidence the en-

(Testimony of Max M. Cohn.)

velop just referred to and ask that it be marked, Complainant's Exhibit "Z."

I offer in evidence the Regenstein letter of December 10th, 1906, which appears on pages 100 and 101, of the present record and ask that it, with the ringless envelop referred to, be marked as Complainant's Exhibit "AA."

Recess. [142]

By Mr. COHN.—Supplementing my answer and completing same to Q. 70, I wish to state that although Mr. Regenstein has solved the problem of making a proper border he has not solved the problem of making a window envelop without the border, as stated in his letter of December 10th, 1906, and although over four years have passed since I received this letter Mr. Regenstein still adheres to the border. Unquestionably, Mr. Regenstein has discovered the same as I have, that printing the border entails considerable expense, and if it were possible to produce a salable, commercial, window envelop without this border, Mr. Regenstein would do so. The operation of applying this border requires the utmost care and skill, as the ink used must be just of the proper consistency and applied with utmost care. It is therefore, self-evident that no one would resort to the border if they could accomplish the same result without it, especially as envelops are sold on an extremely close margin of profit and any saving of expense would be gladly embraced by a manufacturer.

Q. 71. Mr. Regenstein at pages 106 to 109, defendant's record has testified that a Mr. Callahan [143]

(Testimony of Max M. Cohn.)

offered to sell him your patents which are here in suit. Did you ever authorize such offer and if you had any arrangements with Mr. Callahan will you please state just what they were.

A. I never authorized any one to offer my patents to Mr. Regenstein, but on July 29th, 1909, I gave one E. H. Callahan an option to buy my patents. This option extended to January 2d, 1910. Mr. Callahan however, did not avail himself of the option that he secured and I have no knowledge what offers he may have made while this option was in force. I received as a consideration of this option Fifty Dollars (\$50.00); the terms of the option being that I was to receive from Ten Thousand Dollars to Fifteen Thousand Dollars for my patents, the purchase price depending upon the month that the sale would be consummated, for instance, if the sale would be made on or before August 2d, 1909, I was to receive Ten Thousand Dollars, the sum of One Thousand Dollars being added for every month's delay that the option continued to run. As stated before, the option expired on January 2d, 1910, no sale resulting therefrom.

Q. 72. Were you ever aware of Mr. Callahan offering your patents for sale to Mr. Regenstein or Regenstein's Company? [144]

A. I had absolutely no knowledge of it.

Q. 73. Are you familiar with Defendant's Exhibit Brown 1862 patent? A. I am.

Q. 74. Brown's patent says, "The other part of my invention consists in an improved envelope, or wrap-

(Testimony of Max M. Cohn.)

per D. The improvement is, to make the envelope or wrapper, transparent, sufficiently to clearly show the cards of address through its face. There may be only a transparent portion B, large enough to exhibit the 'direction' through it; and this may be made either by rendering a portion of the envelope, or wrapper, itself transparent by the same means or substances as employed for making tracing paper, or any other, in the process of manufacturing the paper, or the envelope, leaving the remainder of the envelope opaque." I will ask you Mr. Cohn, first, if you are familiar with Tracing paper and the method or means for making it, and generally as to the manufacture of transparent paper.

A. I am familiar with it.

Q. 75. Will you outline the method of manufacture and then consider the quotation above with respect to [145] making envelopes according to the Brown formula.

A. It is very evident that Mr. Brown had absolutely no knowledge of the paper business, nor had he tried to manufacture envelopes in accordance with his own specifications. It is impossible to make paper transparent in spots by the same means as making tracing paper. It is also foreign to the art of paper making to make a sheet of paper which will be partly opaque and partly transparent. Any one familiar with the manufacture of paper knows that a sheet must be uniform from end to end, and cannot be produced with transparent spaces as Brown evidently thought could be done. The same is true of

(Testimony of Max M. Cohn.)

tracing paper; it being impossible to treat a sheet so that it would be transparent only in certain predetermined places. Mr. Brown further shows his ignorance of the paper business by stating, "the cost of manufacturing the improved envelops will scarcely, if any, exceed that of ordinary envelopes now in use. For while the additional cost of rendering the envelops and wrappers transparent, will be but little, a cheaper quality of paper may be employed, not requiring to be finished so highly as for receiving the pen." Had Mr. Brown been familiar with the paper business he would not have made a blunder of this kind [146] because instead of requiring a cheaper paper, it requires a paper costing four or five times as much as ordinary envelop paper in order to render it transparent by "the same means or substances as employed for making tracing paper." Summing up, I might state that it would be entirely impractical to make a suitable commercial envelop in the manner described in the Brown patent. This statement is substantiated by the fact that no commercial envelops were ever produced under the Brown patent.

Q. 76. I will invite your attention to Defendant's Exhibit, Brown 1862, patented envelop appearing in defendant's record opposite page 372, and I will ask you if that exhibit according to your understanding of the Brown patent embodies the invention of the Brown patent and according [147] to Brown's disclosure? A. No, it does not.

Q. 77. Please state your reasons.

A. The exhibit referred to has not been rendered

(Testimony of Max M. Cohn.)

transparent by the same means or substances as employed for making tracing paper, as disclosed in the Brown patent, the shape and location of the transparency is entirely at variance with the drawings shown in the Brown patent. The quality of the paper is no doubt different than Brown intended to use in the envelop that he had in his mind, because it is a paper finished for taking the pen, whereas he explains that he would use a paper not finished for that purpose. The opening in the envelop suggested by Brown was evidently intended to be very small, only allowing room enough for a finely printed card to show through and it was never intended, nor was it claimed to be used, as an envelop through which an address on a folded enclosure would show through, and which is exemplified in the exhibit referred to. As stated by defendant's counsel on page 374, of the defendant's testimony, the envelop referred to "was made by the Transo Company on the same kind of paper used for their stock envelops and the same printing places for applying the oil used in making it that is used for the stock envelop, but with the [148] tinted matter omitted from the inner side of the paper, and the ring or border omitted around the window on the outside." This statement made by Mr. Banning probably explains, better than I can, the existing differences. Mr. Brown's patent is entirely silent as to the use of oil, he makes no mention in his specifications of using printing plates and I am sure would never accomplish the result here produced in this exhibit if he followed his own specifications.

(Testimony of Max M. Cohn.)

Summing up therefore, I fail to recognize any resemblance between the exhibit referred to and the imaginary envelop described by Mr. Brown.

Q. 78. Are you familiar with the Defendant's Exhibit, Busch British Patent of 1896? A. I am.

Q. 79. Mr. Bond says on page 376, D. R., on referring to this Busch patent, "both Figs. 1 and 2 show a border around the outer edge of the envelop, with the portion within the border transparent." Will you indicate the border in Figs. 1 and 2 of the Busch patent?

A. It is impossible for me to indicate this border as no border exists. [149]

Q. 80. Then, you disagree with Mr. Bond as to the existence of a border in Figs. 1 and 2 of Busch?

A. I do. It is evident that Mr. Bond mistook the outline of the enclosure shown in these drawings, Figs. 1 and 2, for a border. A careful inspection, however, of the drawings in question prove conclusively that there is no border shown. Both Figs. 1 and 2 show the enclosure as is natural in such instances, to rest toward the bottom of the envelop. Therefore, the space which Mr. Bond inadvertently took for a border is much narrower on the bottom line than on the top line of the drawing. This difference is noted in both Fig. 1 and Fig. 2, but is more strongly emphasized in Fig. 2. It is reasonable to suppose that if a border were to be shown it would be uniform on all sides. Fig. 2 shows a broken section of the envelop with the enclosure still remaining in place. Had there been a border on the envelop face it would

(Testimony of Max M. Cohn.)

not have shown in the place that is torn away to show the enclosure.

Q. 81. Looking at Figs. 1 and 2 of Busch, has the face of this envelop any portion at all that is opaque or nontransparent? [150]

A. No. The entire face of the envelop is transparent.

Q. 82. Mr. Bond on page 398, D. R., in referring to the envelop No. 1, shown opposite page 400, says, "It is also a representation shown in Fig. 1 of the drawing in which the front of the envelop is *nearly all* transparent, with a border surrounding the transparent portion of the envelop." According to your previous statement, is Mr. Bond correct?

A. No. He is mistaken, the entire face of the envelop shown in this drawing of the Busch patent is transparent.

Q. 83. Referring to these envelops, Defendant's Exhibit, Busch, 1896, Nos. 1, 2 and 3, appearing opposite page 400, D. R., are those envelops, or either of them, commercial, practical envelops suitable for the uses to which your envelops and the Transo envelops have, or are put, that is, as a mailable commodity?

A. No. None of the envelops mentioned are practical or salable. In my previous testimony I have explained the undesirable features of an envelop made from transparent stock. [151] All of these objectionable features are present in the exhibits referred to. Briefly summarized, the objections are as follows: They are brittle and flimsy. They do not seal

(Testimony of Max M. Cohn.)

readily. They do not hold the stamp with sufficient strength. It would be impossible to postmark Busch specimens 2 or 3, owing to the dark background made necessary to kill the transparent nature of the paper. Busch specimen No. 1, when used in connection with a white enclosure, would have all the characteristics and appearance of a "mourning" envelop. They would not serve as safe closures and would be torn and disfigured in the mail. They would find no sale on the market.

Q. 84. Referring to Defendant's Exhibit, Busch envelope transparent stock appearing opposite page 402, D. R., Mr. Bond was asked Q. 12, "What do you understand to be the nature of the material or preparation used to make the transparent stock for the Busch envelop?" Mr. Bond's answer was, "Some material having the property of transforming paper of an opaque character into paper of a transparent character. So far as my knowledge goes *paraffine* is one of the materials ordinarily used for making paper transparent, but any material having the requisite [152] oily property could be employed for the purpose, such *oily* substance or material being of a nature to make the paper, when dry, with a solid surface that would not interfere with its use as an envelop, or for any other purpose, and which would not give a *greasy* appearance or produce a *greasy* effect with the use of the envelop." I have emphasized certain words, by underscoring them. Was this envelop Busch transparent stock made by treating opaque paper with *paraffine*, or other oily substance?

(Testimony of Max M. Cohn.)

A. No.

Q. 85. Do you know how it was made, and if so, please state.

A. The paper used in the manufacture of this envelop was never an opaque paper. It comes from the paper machines in transparent form just as it now appears, and has never been treated with paraffine or oil of any description, since it left the paper machine. The process of making this paper transparent has long been confined to some special mills in Germany, and it has only been but very recently, say within the last two years, that two mills have started manufacturing this character of paper in the United States; the duty having been recently raised on this commodity [153] to such an extent that it has been an inducement for some of the foreign paper makers to undertake the manufacture of this character of paper in the United States. The resultant transparency of this paper is occasioned by the various ingredients that are put in the beaters during the process of its manufacture. The firm of the Zellerbach Paper Company, with whom I am connected, are one of the largest, if not the largest importers of this character of paper in the United States. This paper is used very extensively by the dried fruit packers. Therefore, there is a large sale of this paper in California.

Meeting adjourned until February 27th, 1911, 10 A. M. [154]

San Francisco, February 27th, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

(Testimony of Max M. Cohn.)

(Witness Continuing:) There is nothing of an oily or greasy preparation used in the manufacture of this transparent paper. It is known to the trade as a grease-proof paper, and as stated before, is principally used to pack around food stuffs of various kind; delicatessen stores using it to wrap packages of slices of ham and bacon. It is also used for packing sandwiches, etc. The various ingredients that go to make up a finished paper are mixed with the pulp at the time of manufacturing same and the sheet is then drawn through calendars or rolls, which give it the highly glazed appearance that it has, but no chemical or oil of any kind is applied to the paper from the time it leaves the paper machine. To explain the calendars or rolls in paper making a little more fully, I would state that calendars are pressure rolls, sometimes run hot and at other times cold and the function of these calendars is to put a surface or glaze on the paper. I spoke of but two mills making this character of paper in the United States. One of these has been in operation for about eight or nine years [155] in Hartford City, Indiana, operating only in a small way. It has only been within the past two years that they have come into much prominence.

Q. 86. Please look at Defendant's Exhibit January, 1904, envelopes No. 1 and No. 2, appearing in defendant's record opposite page 30, and state, if you know, how those envelopes were originally cut and formed.

A. The envelopes referred to, Defendant's Exhibit

(Testimony of Max M. Cohn.)

No. 1 and No. 2, known as January, 1904, envelops, were cut with a regular envelop die. Dies of this character are quite expensive and are only kept at envelop factories. The envelops, no doubt, were folded and pasted by hand; the gum on the sealing flap also being applied by hand. The work, however, was done by an expert envelop-maker, as no amateur could have made as perfect an envelop, and when I say a perfect envelop I only refer to the construction of the envelop, and not to the transparent portion, which I do not consider perfect. It is a very difficult matter for an inexperienced person to fold and paste an envelop by hand, so as to give same a neat and finished appearance. It is still more difficult for an inexperienced person to apply the gum on the flap. The envelops [156] in the exhibits referred to were prepared in the manner that is customary with experienced hand-made envelop-makers, and is accomplished by taking a series of envelops with the flaps turned up or opened out, one on top of the other, spacing same apart so as to leave sufficient width exposed along the edge of the flap to take the gum. A brush previously dipped in the gum is then run over the exposed edges by hand, applying the gum to each one successively, with the brush always moving in the direction of the opened-up flaps. Anyone familiar with the envelop business can immediately recognize envelops prepared in this manner, because the extreme ends generally show an abrupt square appearance, parallel with the ends of the envelops. They are further identified on account of the inner

(Testimony of Max M. Cohn.)

edge of the gummed area being parallel with the outer edge of the flap. I illustrate this by pasting two of Regenstein's 1904 envelops together, so that one flap overlies the other; these envelops being duplicates of defendant's exhibits produced in the record, as No. 1 and No. 2, January, 1904, envelops.

By Mr. TOWNSEND.— [157] I offer in evidence the envelops just referred to in illustration by the witness, as Complainant's Exhibit "BB"; which envelops are two specimens furnished me by the counsel for defendant at the time of the taking defendant's testimony.

(WITNESS Continuing:) In order to more fully illustrate this matter, I herewith produce three machine-made envelops pasted together in the same manner, showing that the gum on the flap is applied in a different way, that is, the gum on each envelop is applied separately or individually from every other envelop, instead of in series. The ordinary method of making envelops by machine is as follows: A series of envelop blanks having been previously die-cut are fed to an envelop machine. A plunger to which gum has been applied, drops down on these series of blanks picking up the top-most blank and carrying it to the folding device, which joins three of the extending parts or flaps, leaving the sealing flap, to which the gum has been applied, disengaged. They are then transferred to a carrier, passed over or under [158] a fan which dries the gum on the sealing flap.

By Mr. TOWNSEND.—I offer in evidence as

(Testimony of Max M. Cohn.)

Complainant's Exhibit "CC," the three machine-made and pasted envelopes, referred to by the witness in his illustration.

Q. 87. Could you manufacture transparent envelopes like that illustrated by the so-called Busch envelop, opposite page 400 and page 402, D. R., by machinery? A. No.

Q. 88. Why?

A. Owing to the highly glazed surface of the paper used in these envelopes referred to, it is impossible to get a gum or adherent that would work successfully in a machine. It is possible to paste the body of the envelop by using a heated glue or a specially prepared substance, but substances of this character would be useless when applied to the sealing flap, because as everyone knows, the gum to be used on a sealing flap must be of such a nature that it can easily be affected by moisture, so that an [159] envelop can be sealed either by being moistened by saliva or with a sponge, etc. I might state here that I omitted to mention this objection in my previous testimony in reference to these transparent envelopes, but it is one of the most serious of the many objectionable features.

Q. 89. Was this objection of sealing the envelop or the objection of manufacturing the envelop by machinery apparent to you at the time you got up your transparent stock envelopes, exhibit "R," and on which your application, later abandoned, was based?

A. No. I did not realize that I was running into

(Testimony of Max M. Cohn.)

any difficulty of this sort. You will notice from the exhibit referred to, that there is no gum on the sealing flap. It will also be noticed that in the Defendant's Exhibit of Busch envelops opposite page 400 and page 402, that there is no gum on the sealing flaps. This first became apparent to me when I consulted some envelop makers in reference to making an envelop of this character by machinery. I was informed that it was practically impossible to make envelops of this character by machinery; one reason being that on account of the character of the paper [160] the plungers had a tendency to pick up more than one sheet at a time, but the main objection was that no suitable gum could be found that would work successfully in a machine for making envelops of this character, that is, for gluing the body and gumming the sealing flap.

Q. 90. Whom did you try to get to make these transparent stock envelops, exhibit "R"?

A. The United States Envelop Company of Worcester, Mass.

Q. 91. And they turned down the proposition for the reasons stated? A. They did.

Q. 92. Calling your attention again, Mr. Cohn, to the defendant's January, 1904, envelop exhibits, I would ask you to examine the so-called transparent portion of those envelops and state whether or not they disclosed any evidence of this transparent portion being of less density or thickness than the body of the envelop due to a greater pressure having been applied to this portion of the envelop? [161]

(Testimony of Max M. Cohn.)

A. They do not.

Q. 93. Do they indicate any other treatment of the paper than that due to the application of the oil and border as outlined by Mr. Regenstein in his testimony? A. They do not.

Q. 94. Are you familiar with the Defendant's Exhibit Boldt British patent #29,956, of 1897?

A. I am.

Q. 95. From your experience in the paper business state whether or not the wrapping device shown in this Boldt patent, is practical for the uses and purposes for which your envelop exhibit "L" and the Transo envelop and the Heinz envelop were and are designed and used.

A. No, it is not practical for such purposes.

Q. 96. State your reasons.

A. The main objection in trying to use a wrapper of this kind for a commercial envelop would be the cost of making same, [162] Boldt in his patent explaining that a covering such as mica, gelatine or celluloid could be used as a covering over an opening in an envelop or wrapper. Any one of the substances named are too high in price to be put to practical use in a commercial envelop, and this particular feature has been brought to a much more practical state by A. F. Callahan in his patented two-piece envelop, known as the "Out-look Envelop," Callahan 1902 patent, now in evidence. I cannot, however, see how either the Boldt or Callahan patent can have any connection with the envelops referred to, Ex. "L," and

(Testimony of Max M. Cohn.)

defendant's envelops, as they are unpunctured one-piece envelops.

Q. 97. State what you find, if anything, in the Boldt patent to suggest or disclose either the feature of your second advertising patent here sued on, or the Heinz envelop, alleged to be an infringement of that patent.

A. I find nothing in this patent that would suggest or disclose anything either referring to the features of my second patent or in the Heinz envelop, referred to. [163]

Q. 98. Mr. Bond has stated at page 310, D. R., "that the inventor Boldt intended and had in mind to utilize the transparent window or opening as a means for delineating a *trademark or name*, or other symbol, or any design or symbol *for the purpose of advertising*." Will you please point out if you can, where Boldt's drawings show any trademark or name, or any advertising feature in connection therewith, or any advertising feature in connection with any symbol or design?

A. I can point out no such feature as the drawings in question do not disclose any. The only drawing shown outside of an ordinary opening intended for the display of merchandise, is Figure 8, which shows a letter "N." This drawing however is absolutely meaningless, and does not convey to the mind an advertising feature of any sort, as there is no printed matter in conjunction with same, and the letter used might stand for needles, noodles, necklaces, or any articles which would begin or end with the letter

(Testimony of Max M. Cohn.)

"N." It is plain to be seen that an envelop with this shaped opening could not be practically used for an addressing space, owing to the peculiar construction of said opening. I notice in Boldt's specification that he says, "the same purpose may be effected by painting or embossing [164] or otherwise delineating a trademark or a name, or other symbol, or device upon the transparent covering as indicated in Figure 9." Inspection, however, of Figure 9 does not disclose any such matter described by Boldt, and if it did it would entirely defeat the object of my second patent and the Heinz envelop referred to, in making the address on an enclosure unreadable.

Q. 99. What does Figure 9 to your mind represent?

A. Figure 9 to my mind represents a merchandise wrapper or envelop with a square opening cut therein and a piece of celluloid or mica pasted behind this opening and completely bridging the opening in every direction, or closing the opening, as expressed by Boldt, the inventor.

Q. 100. Referring to your preceding answer, if you can picture what Boldt had in mind when he referred to Figure 9, what did you mean when you said that doing what Boldt contemplated in Figure 9, "would entirely defeat the object of my second patent and the Heinz envelop referred to, in making the address on an enclosure unreadable"? [165]

A. It is impossible for me, or anyone else, to picture what Boldt had in his mind by the description furnished. In my previous answer I stated that it

(Testimony of Max M. Cohn.)

would entirely defeat the object of my second patent. I wish to correct this, as I meant to say it would defeat one of the objects of my second patent, which object is to have a transparent addressing space, unobstructed by any printing, painting or embossing upon said transparent addressing space, as probably indicated by Boldt in his specifications but not shown in any manner in the drawing Boldt referred to. Bold's entire object, as disclosed by his specifications was the displaying of various articles of merchandise, and it is very evident from his specifications and description that he had absolutely no other object in mind. While a wrapper such as described by Boldt might be practical to cover articles of merchandise that retail as low as 5¢ or 10¢ apiece, it would never be practical for a commercial envelop, because as explained before, the cost of manufacturing would be entirely too great, nor could a package or wrapper as described by Boldt, be commercially produced in an envelop machine.

Recess. [166]

By Mr. COHN.—During the recess I made two models showing the Boldt Figures 8 and 9, and herewith produce same. (Witness produces models.) I have marked them, "Boldt Figure 8" and "Boldt Figure 9," respectively.

By Mr. TOWNSEND.—I offer the two models in evidence, and ask that the model of Figure 8 be marked Complainant's Exhibit "DD"; and the model of Figure 9 be marked, Complainant's Exhibit "EE."

(Testimony of Max M. Cohn.)

Cross-examination.

(By Mr. BANNING.)

XQ. 101. This patent of yours that you have produced, #785,291, of March 21, 1905, for Improvements in Combination Statements and Collection Records does not show or describe the envelop of your first or second patents sued on, or any other envelop, does it? A. No. It does not. [167]

XQ. 102. I notice this patent was applied for May 5, 1904. Had you ever applied for a patent of any kind prior to that date? A. No.

XQ. 103. This abandoned application Ser. No. 207,082, filed May 9, 1904, which we compared with your British patent #14,478, of 1904, applied for June 27th, 1904, as I understand, is substantially for the same subject matter as is disclosed in your British patent. Is this correct? A. It is.

XQ. 104. And both your abandoned application and your British patent were for an envelop made from paper or stock transparent as distinguished from opaque; is not that correct?

A. Yes. The paper to be used for envelops described in the abandoned patent application and in the British patent as described in your question was to be of transparent paper.

Q. 105. Was this abandoned application filed May 9, 1904, the second application that you ever filed in the United States Patent Office for a patent? [168]

A. It was.

XQ. 106. When was your next application filed in the United States Patent Office?

A. November 8, 1904.

(Testimony of Max M. Cohn.)

XQ. 107. That was for your first patent in suit?

A. It was.

XQ. 108. When was your next application filed?

A. January 17th, 1905, as a division of the application filed November 8, 1904, which resulted in my second patent in suit.

XQ. 109. Then, as I understand you, between the date of filing your abandoned application May 9, 1904, until you filed your application for the first patent in suit, November 8, 1904, you filed no applications in the United States Patent Office for patents. This is correct is it? A. That is correct.

XQ. 110. Referring to this abandoned application filed May 9, 1904, for the same subject matter as your British patent, I find by looking at the certified [169] copy of the proceedings in the Patent Office, that this application was rejected by the Examiner June 15, 1904; that it was amended and argument presented by your attorney November 4, 1904; was again rejected December 6, 1904; was again amended and argued January 25, 1905; was again rejected February 23, 1905; was again amended March 25, 1905; was again rejected April 20, 1905; was again amended May 4, 1905; was again rejected May 25, 1905; was asked to be reconsidered June 2, 1905; and was again rejected June 24, 1905, after which no further proceedings appear to have been had in the case; I have *corrected* enumerated these actions and dates in this abandoned application as they appear in the certified copy, have I not? A. You have.

XQ. 111. As I understand, this envelop exhibit

(Testimony of Max M. Cohn.)

“R” is produced by you as a sample of the envelop described in your 1904 British patent; is that a correct understanding? A. It is.

XQ. 112. I believe the drawings of your abandoned application and of your British patent are identical. That is correct, is it? A. It is. [170]

XQ. 113. I notice that your British patent was taken out in your name, and also in the name of John Charles Shipp, both of this city; who is this Mr. Shipp?

A. Mr. Shipp was until very recently connected with the Illinois-Pacific Glass Company.

XQ. 114. He is not, and so far as you know never has been, a manufacturer of paper or envelops. Is this correct? A. That is correct.

XQ. 115. Did he ever have any interest in your United States patents sued on? A. He did not.

XQ. 116. His connection with the patents was confined to this British patent; was it? A. It was.

XQ. 117. You told us about an option that you gave at one time to a Mr. Callahan. What relation is he, if you know, to A. F. Callahan, whose 1902 patent has been offered in evidence in this case?

A. He is A. F. Callahan's brother. [171]

XQ. 118. I believe the Outlook Envelop Company, or a company of some such name, is manufacturing the Outlook envelops shown and described in the Callahan 1902 patent. This is your understanding, is it not? A. It is.

XQ. 119. Where is the Outlook Company, so designated, located? A. In Chicago, Illinois.

(Testimony of Max M. Cohn.)

XQ. 120. And where does this brother of A. F. Callahan live, if you know?

A. To the best of my knowledge his last address was Sebastopol, California.

XQ. 121. Is this Mr. Callahan or A. F. Callahan, or the Outlook Company interested in any way in the outcome of this litigation, or assisting in any way to carry it on?

A. I refuse to give any information in reference to who, if anybody, is assisting me in the matter of this suit.

XQ. 122. Has anyone an option on the patents in suit, or is there any understanding in reference to the purchase or sale of same dependent upon the outcome of this litigation? [172]

A. I refuse to give any information concerning points of this character, as I believe that this is a matter which is entirely my own affair.

XQ. 123. I asked these questions because Mr. Regenstein is of the belief that the competitor of the Transo Company—The Outlook Envelop Company—is back of or behind this litigation, and so I thought it only fair to give you an opportunity to deny that such was the case, if you desired. With this explanation I again give you an opportunity.

By Mr. TOWNSEND.—Without registering any formal objection against this line of questions, I would say that the only possible relevancy or materiality such evidence pro or con could have, would be as affecting complainant's title, and his right to sue, and the right to equitable relief here asked. If coun-

(Testimony of Max M. Cohn.)

sel wants to ask the witness if he owns the patents sued on and counsel is not satisfied with the answer or with the testimony given in the *prima facie* case of complainant that the witness owns these patents, he of course is free to offer his proofs that the facts are otherwise. [173]

A. There is no desire on my part to enlighten Mr. Regenstein on this subject.

XQ. 124. The Outlook Envelop Company, if that be the proper name of the concern, has been manufacturing the Outlook envelops like those shown and described in the Callahan 1902 patent for a number of years. Has it not? A. It has.

XQ. 125. And these envelops are manufactured and used in very large quantities, are they not?

A. I believe they are.

XQ. 126. The defendant's exhibit, Callahan patented envelop opposite page 371 of the D. R., shows one of these Outlook envelops, as you are familiar with them, does it not? A. It does.

XQ. 127. Aside from the order of 10,000 envelops which you say you furnished Zellerbach & Sons in November, 1904, what other orders for such envelops have you ever filled? A. No others. [174]

XQ. 128. What was the business of the Illinois Pacific Glass Company, with which you were connected?

A. They were in the business of manufacturing bottles, and dealing in bottlers' supplies of all kinds; also were engaged in the printing of labels of every description.

(Testimony of Max M. Cohn.)

XQ. 129. I believe you stated that you were an officer of the Glass Company. Did I correctly understand you?

A. Yes. I held the position of Secretary with this corporation.

XQ. 130. I suppose you were also a stockholder in the Glass Company? A. I was.

XQ. 131. Are you still an officer or stockholder in the Glass Company?

A. No. I am neither an officer nor a stockholder.

XQ. 132. You are an officer and stockholder in the Zellerbach Company, are you?

A. I am Secretary of the Zellerbach Paper Co., and own a small amount of stock. [175]

XQ. 133. In answering Q. 12, you spoke about making an envelop with the window in the shape of a cigar, and with the words, "Cremo" above the window, and "Cigar," below it. Have you any of those Cremo envelops? A. I think not.

XQ. 134. To refresh your recollection, I will ask you if it was not a Cremo cigar envelop that you sent to Mr. Regenstein when you sent him some in the registered letter in the first part of September, 1905?

A. My recollection is that I sent Mr. Regenstein a sample of the Cremo cigar envelop, also a sample of the Perfect cigar envelop, such as shown in exhibit "Q."

XQ. 135. At the time Mr. Regenstein was examined and asked about the matter on cross-examination he was unable to remember and to produce any

(Testimony of Max M. Cohn.)

of the samples that you sent him. Do you think you would recognize the sample of the Cremo cigar that you sent Mr. Regenstein if I am able now to produce the same? A. I can. [176]

XQ. 136. I show you a Cremo cigar envelop and ask you to look at it and see if you recall it as the one that you sent to Mr. Regenstein.

A. I do. It is one of the early specimens embodying the advertising feature and was produced at the printing office of F. H. Abbott & Company. It looks like a rather complete envelop and not a fragment of an envelop; it also has all the appearance of a printed envelop and not a sketch produced with a brush or pen or ink, as stated by Regenstein in his testimony in answering X question 176, p. 62 and 64, D. R.

XQ. 137. I suppose you regard this Cremo cigar as exhibiting or illustrating the envelop claimed in your second patent. Do you? A. It does.

By Mr. BANNING.—Defendant's counsel suggests to complainant's counsel that if he desires to introduce the Cremo cigar envelop in evidence he will give it to him for that purpose.

By Mr. TOWNSEND.—I offer this Cremo cigar envelop proffered by defendant's counsel, in evidence as Complainant's Exhibit "FF." [177]

XQ. 138. This Cremo envelop is an envelop with the transparent window in the form of a cigar with a solid green border extending from the outline of the cigar to the edges of the envelop in every direction, and overlapping so as to present a green surface

(Testimony of Max M. Cohn.)

extending in from a quarter of an inch to a slight half inch all around the edges of the back, and with the word "Cremo" above the outline of the cigar, and the word "Cigar" below the outline, appearing in white letters through the green border, evidently being the original white of the paper from which the envelop was made. This substantially describes the envelop, does it not?

A. That is a very good description of the envelop, and it is made precisely after the specifications and drawing Fig. 2 of my second patent.

XQ. 139. Mr. Townsend, in speaking of the transparent stock envelop, exhibit "R," mentioned that it was one that he had in the files of the May 9, 1904, abandoned application from a time before, though he does not remember how long before, November 4, 1904, on which date as appears from the letter to the Patent Office filed November 4, 1904, a sample was submitted to the Patent Office with such letter. Please look at the envelop exhibit "R," and state how nearly, if at all, it corresponds with your recollection of the sample submitted to the Patent Office with the letter filed [178] November 4, 1904.

A. My recollection of this is that I furnished Mr. Townsend with several styles of these transparent paper envelops. I am unable to state which ones he enclosed in the letter mentioned.

By Mr. BANNING.—Defendant's counsel requests complainant's counsel, if he has no objection, to state his recollection as to whether or not the sample submitted to the Patent Office with the letter

(Testimony of Max M. Cohn.)

of November 4, 1904, in the abandoned application, was a fac-simile of the envelop offered in evidence as exhibit "R."

By Mr. TOWNSEND.—I have no doubt but that this present envelop exhibit "R" is a fac-simile of the one filed at the time specified in the Patent Office, for these reasons:

1. This envelop exhibit "R" was found and was the only one found in our office file of this abandoned Cohn application.

2. I have carefully examined the file and the correspondence which I carried on at that time on behalf of our firm and Mr. Cohn with our Washington associate, Mr. T. W. Fowler, who [179] represents us before the Patent Office and who generally prepares the amendments, according to our suggestions. I find a carbon copy of a letter of October 24, 1904, in this file, addressed to Mr. Fowler, and referring to this case in which appears the following paragraph:

"We enclose a sample to show how the sender's name card appears in transparency in the corner." And this letter generally embodies the subject matter used by Mr. Fowler in the amendment of November 4, 1904, addressed to the Patent Office. I also find a carbon copy of a letter in this file addressed to Mr. Fowler and dated May 2, 1904, which is as follows.

"May 2, 1904.

Mr. T. W. Fowler,

Dear Sir: In the accompanying case Max M. Cohn, Envelop, we beg to enclose samples of the invention

(Testimony of Max M. Cohn.)

together with old style perforated envelops.

Note difference in our envelop when statement is enclosed and when not enclosed.

Yours truly,"

Whether these samples of the invention sent May 2, 1904, were duplicates of exhibit "R," with the transparent name card in the corner. [180] I cannot recall.

XQ. 140. After the communication of November 4, 1904, had been filed with the envelop accompanying it as appears from the certified copy of the abandoned May 9, 1904, application, and on January 25, 1905, as appears from such certified copy, the specification was amended by inserting a description of the sender's return card in transparent letters in the corner of the sample envelop filed; is not this correct? A. It is.

XQ. 141. How far, if at all, do you consider that the envelop, exhibit "R," and the envelop described in your British patent and in your abandoned application, embody or illustrate the envelop described and claimed in your two patents herein sued on? [181]

A. There is only one point of similarity, inasmuch as both are envelops with an unpunctured face.

XQ. 142. Do you consider that the envelop exhibit "R," and the envelop described in your British patent and in your May 9, 1904, abandoned application contains or embodies the invention described and claimed in your two patents sued on? A. I do not.

Meeting adjourned until February 28th, 1911, 10 A. M. [182]

(Testimony of Max M. Cohn.)

San Francisco, February 28th, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

Cross-examination.

(By Mr. BANNING.)

XQ. 143. As I understand you, this abandoned application filed May 9, 1904, was your first application for a patent on envelops. A. It was.

XQ. 144. These specifications of this abandoned application contain, among other things, a paragraph reading as follows,—does it not; namely,

“I do not wish to be understood as limiting myself to colored paper or paper to be colored, since there are other means for accomplishing the result here desired which is that of producing an imperforate envelop having a generally opaque surface and a limited transparent portion.”

A. It does.

XQ. 145. This same paragraph, except in the plural, is found in your British 1904 patent in evidence. A. It is. [183]

XQ. 146. I believe there was never any appeal taken to the rejection of this May 9, 1904, abandoned application; this is correct, is it not?

A. Nothing was done to my knowledge except what is shown by the certified copy of the application.

XQ. 147. And this certified copy shows no appeal to the Board of Examiners-in-Chief or to the Commissioner, does it? A. It does not.

XQ. 148. When we compared this certified copy of the abandoned May 9, 1904, application with your

(Testimony of Max M. Cohn.)

British 1904 patent the other day we found that the specifications and drawings of the application and of the patent were substantially alike, but that there was some difference in the claims of your application as filed and the claims of your British patent. As I am not offering this certified copy of the application in evidence, I will ask you to read into your answer to this question the claims of the application as the same was filed May 9, 1904.

A. The claims of the abandoned application as filed are as follows: [184]

“1st. As a new article of manufacture an envelop having an imperforate face portion generally opaque, but provided with a limited transparent portion through which a sendee's name and address on an enclosure may be legible.

“2nd. As a new article of manufacture an imperforate envelop having a generally opaque surface and a limited transparent portion.

“3rd. An envelop blank comprising an unpunctured sheet having a generally opaque surface with a limited transparent portion.

“4th. As a new article of manufacture, an imperforate envelop having a generally opaque colored surface and a limited transparent portion.

“5th. An envelop having an unpunctured face and provided with a transparent space for the sendee's name and address to show through, said space surrounded by a generally opaque colored field.

“6th. An envelop blank consisting of a suitable sheet of transparent paper colored except for a suit-

(Testimony of Max M. Cohn.)

able space for writing or printing to show through, the colored body of the envelop being comparatively opaque. [185]

“7th. As a new article of manufacture, an envelop having an imperforate face portion imprinted on its inner side to render it generally opaque but leaving a limited transparent area through which a name and address on an enclosure may show through.

“8th. As a new article of manufacture, an envelop formed from transparent stock and having an interior opaque lining except for a limited area through which writing or print may be read.

“9th. As a new article of manufacture, an envelop formed from transparent stock and colored on its inner side to render the envelop generally opaque except for a limited area which is transparent to allow writing or print to show through.

“10th. As a new article of manufacture an envelop blank of transparent material imprinted to leave only a comparatively limited transparent area through which writing or print is legible.

“11th. As a new article of manufacture, an envelop formed from transparent material, the transparency of said material having been destroyed except for a limited area for a name and address contained on an enclosure to show through. [186]

“12th. An envelop blank of transparent stock rendered opaque except for a comparatively limited space through which writing or print may be legible.”

XQ. 149. I notice some of these claims specifically call for the application of the ink on the inside of

(Testimony of Max M. Cohn.)

the envelop. Is that the way the envelop exhibit "R" has the ink or coloring matter applied?

A. It is. The ink is applied on the inside on exhibit "R."

XQ. 150. You have produced a bunch of ten Transo envelops mailed as seen from the postoffice cancellation stamp during the years 1906 and 1907, which you say shows the oil through the colored ring or border surrounding the window, I believe. Do you consider that these ten Transo envelops offered in evidence as a bunch, as Complainant's Exhibit "T," exhibit or contain the elements specified or called for in the claim of your first patent sued on, notwithstanding, as you say, the fact that "the only preparation can be clearly seen through the ink used in making the border"?

A. I consider that the envelops covered by exhibit "T" contain all the elements of the claim [187] of my first patent sued on. The fact that the oil shows through the ring or border is caused by not using a suitable substance to make this border. It is apparent, however, that the only object of the ring is to cover the objectionable feature caused by the spreading of the oil and it partly accomplishes this object.

XQ. 151. In answering Q. 42, in speaking of the statement contained in exhibit "L" and addressed, "A. B. Adams, Boston, Mass.," you say that, "the arrangement of the addressing space on this statement is purposely made to fit the envelop, as described in exhibit 'L.'" You mean that the state-

(Testimony of Max M. Cohn.)

ment has been purposely folded to bring the addressing space beneath the window of the envelop exhibit "L," do you not?

A. No. I meant in my answer that the arrangement of the printed matter on this statement was of such a nature that when folded it would fit the envelop mentioned, and I think if you refer to my further testimony on this subject, I also speak of the manner in which it is folded.

XQ. 152. In answering Q. 43, asking you about the statement in the envelop exhibit "L," addressed to Adams, you say that, "if this statement was placed in a Transo [188] envelop the entire address would not show, and part of the printed portion that is not supposed to appear in the addressing space would be plainly visible." This grows out of the fact that the windows in your envelops, like exhibit "L," and in the Transo envelops are not located in the same place in the face of the envelops, and that the statement has been folded with special reference to the location of the windows in your envelops; is not this correct?

A. That is correct, and is just exactly what I wish to convey; that is, I desire to show that I had my own envelops in mind when I had printed the statement in question.

XQ. 153. The windows in your envelop are located higher up from the bottom of the envelop than are the windows in the Transo envelops; are they not?

A. They are, but in my specifications I do not limit myself as to the location, size, or shape of the

(Testimony of Max M. Cohn.)

window addressing space.

XQ. 154. If we took this envelop sent you by Mr. Regenstein in his letter of December 10, 1906, which has no ring or border, and printed on to it the ring or border of these various Transo envelops in evidence, the transparent window within the ring [189] or border would be of the shape and size shown in these various Transo envelops, would it not? A. Not exactly.

XQ. 155. I mean the transparent space enclosed within the ring would be of the same size and shape as the transparent space enclosed within the ring of the Transo envelops in evidence, would it not?

A. Obviously it would, but if the ring used on the Transo envelops was applied on the ringless envelop it would leave a portion of the transparent space exposed beyond the outer outline of the end of the ring, and would therefore result in an unsightly envelop. In the Transo envelop which I am using for measurement, the area to which the oil has been applied and showing its spread shows by actual measurement on the inside of the envelop the following dimensions: [190] $1-15/32'' \times 1-31/32''$; while the ringless envelop mentioned shows by actual measurement a transparent area which is $5-1/4'' \times 1-9/16''$. The ring used on the Transo envelop by actual measurement shows that its greatest outside dimensions are, $5-3/16'' \times 1-5/32''$; and that window space appearing within the Transo ring is, $4-13/16'' \times 1-5/16''$.

XQ. 156. In answering Q. 70, you say that you consider the ring or border as of the utmost import-

(Testimony of Max M. Cohn.)

ance. The reasons for your opinion are because the presence of the border gives definition to the enclosed transparent space, covers up and conceals any objectionable or unsightly appearance caused by the irregular or ragged outlines resulting from the running or spreading of the transparency producing preparation, and gives a more finished, or ornamental appearance to the job, or to express the matter more briefly, the border is primarily to cover defects, and secondarily to enhance the beauty and value in some cases. Is not this a brief summary of the objects, uses and purposes of the border mentioned in the claim of your first patent sued on?

A. It is.

XQ. 157. As I understand. your criticisms of the [191] envelop offered to illustrate the Brown 1862 patented envelop, on page 372 of the defendant's testimony, you base such criticisms on the grounds, first, that the illustrative exhibit envelop, "has not been rendered transparent by the same means or substances as employed for making tracing paper as disclosed in the Brown patent"; second, that, "the shape and location of the transparency is entirely at variance with the drawings shown in the Brown patent"; and, third, that "the quality of the paper is no doubt different than Brown intended to use in the envelop that he had in mind, because it is a paper finished for taking the pen, whereas he explained that he would use a paper not finished for that purpose." This statement substantially presents the reasons and grounds advanced by you for criticising the defend-

(Testimony of Max M. Cohn.)

ant's illustrative envelop, does it not?

A. This does not cover all the reasons, but is substantially correct as far as it goes. In my answer to Q. 77, I failed to state, because I had fully explained same in my previous answer to Q. 75, and thought it would be a repetition, that the envelop, Exhibit Brown 1862 patented envelop opposite page 372 D. R., was not produced from paper that was manufactured with a transparent space [192] as Brown imagined it could be, and now add this to my criticisms of the envelop referred to.

By Mr. TOWNSEND.—I do not understand that counsel for defendant claims, in view of his statement, p. 374, D. R., that this envelop opposite page 372, D. R. is a Brown envelop, or constructed according to Brown's directions.

XQ. 158. In order to ascertain your understanding of the Brown 1862 patent, I will ask you if you consider that Brown is limited to any specific *method* of manufacturing the paper out of which his envelops are to be made, or to any specific *means* or substances for producing the transparent spaces that he desired, or to any specific *shape* and *size* of his transparent windows, or to any specific *quality* of paper to be used; and that because the defendant's exhibit does not, in your opinion, correspond to the Brown patent in all these particulars, you do not consider the defendant's exhibit envelop, opp. p. 372 of D. R., a substantially correct illustration of the envelop of the Brown 1862 patent.

A. I do not think that defendant's exhibit envelop

(Testimony of Max M. Cohn.)

referred to contains any of the elements described in the Brown specification. The part of your question [193] referring to the limitations of Brown's patent I consider to be answered more comprehensively by a patent attorney.

XQ. 159. Let us compare the defendant's exhibit envelop illustrating the Brown 1862 patent offered at page 372 of the D. R., and the envelop described in the Brown patent, and see how far they contain matter in common. First, they are both envelops; second, both envelops are made from opaque stock; third, both envelops have transparent spaces or windows in their fronts or faces; four, both envelops have these transparent spaces formed by some means or substances that are adapted to render paper transparent where the same is applied; fifth, both envelops have the transparent windows of a size and shape to permit the address on the enclosure for which they were made to show through the windows; sixth, both envelops have the remainder of the face or front opaque; and, seven, both envelops are one-piece, transparent window envelops. Are not the various features mentioned above common to the defendant's exhibit under consideration and to the envelop disclosed in the Brown 1862 patent?

By Mr. TOWNSEND.—The question is objected to in so far as it relates to the Brown patent, on the ground, first, that the patent itself is the best [194] evidence of Brown's alleged disclosure, and, secondly, that the statement in the question as to what Brown discloses lacks justification and basis in the patent.

(Testimony of Max M. Cohn.)

A. No, for the following reasons: First, the envelop used for illustrating the Brown 1862 patent is an envelop, whereas Brown in his specifications says, "Envelop or wrapper D." By referring to diagram D of the Brown drawings you cannot tell whether he had in mind an envelop or a wrapper, there being no distinction in any of the drawings; second, the so-called Brown exhibit, opp. page 372, D. R., is made from opaque stock. Brown may or may not be made from opaque stock. His specifications call for both and his drawings describe neither. Third, the so-called Brown exhibit has a transparent space or window in its face, while the Brown patent may have a space or hole, covered or uncovered by transparent material, the drawings and specifications in the Brown patent being silent as to the method of construction. Fourth, the so-called Brown exhibit has been rendered transparent by the use of an oily preparation. The Brown patent mentions no such method. Fifth, the so-called Brown exhibit [195] has a transparent window of a size and shape to permit the address on the enclosure to show through, while the Brown patent only calls for a small, oval-shaped opening to permit a finely printed card to show through, according to the drawings shown. Sixth, the so-called Brown exhibit has the remainder of the face or front opaque, while the Brown patent may be either transparent or opaque, the specifications calling for either construction, and it is impossible to tell from the drawings whether they were intended to be opaque or transparent. Seventh, the

(Testimony of Max M. Cohn.)

so-called Brown exhibit is a one-piece transparent window envelop, while the envelop described in the Brown patent may be either a one or two-piece envelop; it being impossible to tell from the drawings whether same is a one or two-piece envelop.

XQ. 160. I omitted to ask you on what grounds the claims of your abandoned application filed May, 9, 1904, were rejected. By referring to office letter of June 15, 1904, it appears that all of the claims were rejected "as being substantially anticipated in either of the British patent to Busch, #11,876, July 4, 1896, and Backe #4,465, March 14, 1889, or the United States patent to Brown #36,393, Sept. 9, 1862." This is correct, is it not? [196]

A. Yes.

XQ. 161. The specification of the Busch British 1896 patent among other things says that, "a portion of the front may be transparent, while the rest of the envelop is opaque." This is true of the envelop exhibit "R," is it not? A. It is.

XQ. 162. This is also true of the envelop defendant's exhibit Busch 1896 envelop No. 1, is it not.

A. It is.

XQ. 163. It is also true of the defendant's exhibit Busch 1896 envelop No. 2, is it not? A. It is.

XQ. 164. The specification of the Busch patent says that, "the back and a portion of the front may be transparent." This is true of the defendant's exhibit Busch 1896 envelop No. 3. Is it not?

A. It is.

Recess. [197]

(Testimony of Max M. Cohn.)

XQ. 165. Referring to this ringless envelop sent you by Mr. Regenstein with his letter of Dec. 10, 1906, do you see any very marked or perceptible running of the preparation that was used to make the transparent face?

A. There are slight indications of running in the specimen referred to.

XQ. 166. So far as the transparency is concerned, what would you say as to this ringless envelop being a merchantable or practical envelop?

By Mr. TOWNSEND.—The question is objected to as irrelevant and immaterial, as it has not been claimed or shown by defendant that this so-called ringless envelop constitutes any part of the prior art.

A. From my knowledge of this business, which was acquired after many months of study and actual work, I know that a transparency such as shown on this specimen cannot be produced mechanically in order to make it a commercial success. It is true that I or any one familiar with this line of work could produce one or several specimens of this kind, but I know they cannot be produced mechanically, which [198] would make them a commercial success.

XQ. 167. Referring to this envelop, exhibit "R," do you think that such envelop illustrates or exemplifies the envelop of your first patent, in suit?

A. I do not, in any respect.

XQ. 168. Referring to the claim of your first patent in suit, do you find any reference in such claim

(Testimony of Max M. Cohn.)

as to whether the preparation for rendering a portion transparent is to be applied to one side of the paper and the colored or tinted border is to be applied to the other side of the paper?

A. There is no mention of this in the claim, but in the body of the specifications I find the following:—

“Usually, and perhaps preferably, the preparation and coloring matter are applied on opposite side of the blank, the preparation on the inside and the coloring on the outside.”

XQ. 169. Do you consider that an envelop made by applying the oily preparation and the colored or tinted border on the same side of the paper instead of on opposite sides would be an envelop which contained or embodied the envelop of the claim of your first patent in suit? [199]

A. I do. I believe that wherever the combination of an oily preparation with a ring or border on an envelop it would come within the scope of the claim.

XQ. 170. Referring to this Perfecto envelop, marked exhibit “Q,” what is the part that you regard as the border, called for in the claim of your first patent in suit?

A. I consider all of that portion of the printed matter that surrounds the transparent portion and accomplishes the desired result of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding stock, to be the border.

XQ. 171. The entire face of this envelop, exhibit

(Testimony of Max M. Cohn.)

“Q,” outside of the transparent portion or window, is covered by the printed matter; is it not?

A. Practically, with the exception of small spaces, which indicate the matches, and the small line of shading around the letters, which are the original color of the paper.

XQ. 172. Referring to the decision of the [200] Commissioner, or rather the Acting Commissioner, dated August 1, 1906, which was copied into the record preceding your examination, I find in the certified copy a brief filed by your attorney marked, “Brief on behalf of Appellant,” which brief was not copied with the opinion of the Acting Commissioner; that is correct, is it not?

By Mr. TOWNSEND.—The exhibit “J,” filed, is a certified copy of both the brief referred to and of the decision, and only the decision was copied because the brief was naturally in the form of an argument, but if counsel for defendant desires we are perfectly willing to have the brief also copied into the record.

XQ. 173. As your counsel has answered the last question for you, and as I do not desire to cumber up the record unnecessarily, I will ask you if we do not find in this brief or argument shown in the certified copy referred to, the following statement:

“It is important to note that the coloring matter which is employed to render the semi-transparent piece opaque and the preparation for rendering transparent [201] that portion of the already semi-transparent field or window, are applied not

(Testimony of Max M. Cohn.)

to the same but to different sides of the sheet or piece.” A. We do.

XQ. 174. After asking you XQ. 164, and before asking you XQ. 165 this afternoon, the witnesses, Samuel Ely Selling, Barton T. Bean, A. Vanderzweip, John C. Tooker, and Edward Epting were examined, were they not? A. They were.

Meeting adjourned until March 2, 1911, 10 A. M.
[202]

San Francisco, March 2d, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

By Mr. BANNING.—In looking over the testimony I find that no statement from me was placed on the record in reply to the statement of complainant’s counsel following XQ. 157, and in order that my position may not be misunderstood, I desire to say that I do consider and claim that the envelop offered and inserted in the defendant’s record, opposite page 372, is in all substantial respects, a fair model or illustration of the envelop described and claimed in the Brown 1862 patent.

XQ. 175. Referring again to the certified copy of the decision of the Acting Commissioner, allowing the application of your first patent in suit, and to the brief filed by your attorney before the Commissioner, I find the following statement, do I not, namely:

“Now, it is a fact that grease or oil applied to paper will spread more upon that surface of the sheet to which it is directly applied than upon the

(Testimony of Max M. Cohn.)

opposite surface. This probably is due to [203] capillary attraction and to the oil following more quickly the direct path offered by the fibres which lie upon the side nearest to that to which the oil is applied; and if this side is an unprinted one or one to which a coloring matter has not been applied to make the paper opaque, the 'creeping' effects of the oil will be more pronounced, as the printing ink itself would retard the same if on the same side as the grease, although it will not obliterate or almost entirely conceal the same, and the ragged line which would bound the transparent window would be unsightly and the window itself would not be sharply defined and have a neat finished appearance."

A. Yes. And immediately following there appears in the brief the following statement: "It is for the purpose of obliterating and concealing the ragged outline of the window due to the 'creeping' of the oil used to make the window transparent, and to give definition to the window, and not as a mere matter of ornamentation, as the examiners-in-chief suggest, that we employ a colored [204] or printed border as a surrounding for the transparent window. Thus we obtain a new result, namely, we may make a transparent window in an unpunctured sheet of paper which is printed on one side to render the portion outside of the window opaque, and then we apply over the already printed surface a relatively heavy darker border to serve to obliterate the bad 'creeping' effect of the oily matter used on the unprinted area of the printed sheet. When the col-

(Testimony of Max M. Cohn.)

ored preparation is used on one side of the sheet and the grease applied to the opposite side of the unprinted area, as we describe, we reduce the 'creeping' effects of the oil to minimum, and obtain an envelope of commercial value, and the only envelope of this type which has proved commercially valuable.

"The reference of the examiners-in-chief to the Brown patent and their opinion that if the directions given in the patent are followed, there would result an envelope like ours, is clearly erroneous because Brown only describes the common printing to render the sheet opaque, and he does not even suggest the advisability of using, or the need for, a separate border to obliterate and conceal certain bad effects due to rendering an unpunctured sheet transparent by oily matter.

"Brown describes two types of envelopes in [205] one of which the sheet is punctured to form a window opening, and over this opening he pastes a previously oiled and separate piece, the objections to which are fully stated in our former brief.

"The British patents cited, one of which is applicant's, also do not disclose the salient feature of this case, namely, the novel and useful border applied about the window for the purpose before alluded to, and therefore are not pertinent references for the claims appealed.

"There is certainly a patentable invention involved in this case and we think it fairly expressed in the claims appealed." I will state that the Transo envelops herein in controversy, are produced ex-

(Testimony of Max M. Cohn.)

actly as explained in the foregoing statement, and the same desired object accomplished.

XQ. 176. If the green border on the Heinz envelop, exhibit "C," and the brown border on the Stickney envelop, exhibit "E," were extended from the edges of the transparent portion solid to the edges of the face of the envelop as the green solid border is extended on this Cremo envelop, exhibit "FF," would there be any transparent portion or window in such envelops representing a pickle or cucumber, or a cigar, or any other article of manufacture?
[206]

A. If solid colors were applied around the already printed brown and green borders of the envelops mentioned, you would still be able to distinguish a pickle and cigar, on account of the shading used in producing these effects. For instance, in the cigar the veins of the wrapper and the ash are plainly visible and would not disappear if the solid color were printed to the edge of the envelop.

XQ. 177. You have not answered my question which is simply this: if solid green and brown borders were printed on the Heinz and Stickney envelops instead of the borders which are now on them and extended solid out to the edges of the face of the envelops, would the transparent windows represent a pickle, or cigar, or other article of manufacture?

A. No; and the desired object would not be accomplished, that is, of producing an advertising device which the envelops in their present form do produce.

XQ. 178. If solid borders extended from the edges

(Testimony of Max M. Cohn.)

of the transparencies or windows out to the edges of the face of the envelops were used, instead of the [207] pickle-shaped and cigar-shaped borders now on the Heinz and Stickney envelops, the windows or transparencies in such envelops would simply be of the form and size of the windows or transparencies in the Transo stock envelops, would they not?

A. No. I consider the windows on the Transo stock envelops to be a combination of the transparency and the printed border. If the envelops mentioned were printed as you suggest, they would have a very different appearance than the Transo stock envelop.

XQ. 179. I am speaking of the transparent portions in these Heinz and Stickney and stock envelops; with solid borders on the Heinz and Stickney envelops extending out to the edges of the face of the envelops the transparent portion in all of the envelops under consideration would be of the same size and shape, would it not?

A. In my previous answer I tried to show the connection of the transparency to the ring or border in the Transo stock envelop. If this feature is eliminated and a colored portion applied merely around the transparent portion the result would be a window of irregular outline depending upon the form taken by the preparation [208] after its application to the paper.

XQ. 180. I am not eliminating the border, but I am trying to direct your attention simply and solely to the transparent portion or window included *within*

(Testimony of Max M. Cohn.)

the borders of the Heinz, Stickney and stock envelops, and I ask you if the transparent portion considered by itself alone, in all of these envelops is not of the same size and shape.

A. If you consider the transparency by itself, they would be alike in all three cases.

XQ. 181. If the word "Heinz" printed on the back of the Heinz envelop and the words "Stickney Fine Cigars" printed on the back of the Stickney envelop were omitted, would you consider such envelops as exhibiting or containing the envelop described and claimed in your second patent in suit?

By Mr. TOWNSEND.—Counsel is asked what he means by the word "Heinz" or "Stickney" printed on the "back" of the respective envelops.

By Mr. BANNING.—I refer to the words printed on the [209] inside of the backs of the envelops opposite the transparent portions or windows. With this explanation please answer the question.

By Mr. TOWNSEND.—The question is objected to if it involves a legal construction of the claims, or ignores the doctrine of equivalents.

A. I do, for the reason that the envelop with the pickle-shaped border shows the name of H. J. Heinz Company printed on the face of the envelop, and this taken in connection with the pickle-shaped border constitutes an advertising device. In other words, anyone seeing this envelop and being unfamiliar with this firm could immediately recognize that the H. J. Heinz Company were in the pickle business; and the envelop with the cigar-shaped border con-

(Testimony of Max M. Cohn.)

tains permanent advertising matter printed both on the face and on the sealing flap of the envelop; this advertising matter taken in association with the cigar-shaped border constituting an advertising device.

XQ. 182. In your last answer you have referred to the words, "Return in 5 days to H. J. HEINZ COMPANY, 37-39 Washington St., San Francisco, Cal." [210] in the upper left-hand corner of the Heinz envelop, and to the words, "If not delivered in 5 days return to WM. A. STICKNEY CIGAR CO. 209 N. 4th St. Saint Louis," in the upper left-hand corner of the Stickney envelop, and to the words "Stick to Stickneys," on the outside of the sealing flap, of the Stickney envelop, have you not?

A. Yes, these are the words referred to, and as will be seen perform a double function in the Heinz envelop of being a return card and at the same time an advertisement for the firm; the words "H. J. Heinz Company" being much more prominent than the rest of the printing matter on the envelop. The ordinary return cards on stamped envelops printed by the Government, the size of the type used is uniform throughout for all the words. The same thing applies to the Stickney envelop, with the exception that it contains the legend on the sealing flap, "Stick to Stickneys." If this were printed on a plain envelop it would have no significance whatever, but when it appears on an envelop with the cigar-shaped border, it is self-evident that it means Stick to Stick-

(Testimony of Max M. Cohn.)

neys' cigars, and therefore becomes an advertising device. [211]

XQ. 184. If we took the Transo stock envelop with its plain border and printed on them every word that we find on the Heinz and Stickney envelops in the same location and with the same size of type, would you consider that such envelops exhibited or contained the envelop described and claimed in your second patent in suit?

By Mr. TOWNSEND.—Does counsel eliminate from his question everything in conjunction with the window which would be “in outline in characteristic of some symbol of trade?” If not the question is objected to as ambiguous and indefinite.

By Mr. BANNING.—My question is plain, as the stock envelops referred to in it, with their plain borders, speak for themselves, and I ask an answer to the question.

A. No. I would consider that if these envelops were printed as described with a plain border such as shown on the Transo stock envelop it would only infringe on the first patent here in suit, because there is no association of printed matter with the window constructed as a symbol of trade, namely, as the Heinz and Stickney envelops. [212]

XQ. 185. I see that the witness, Frederick E. Maynard, describes himself as a patent solicitor; with whom is he connected in business, if you know?

A. With Dewey, Strong & Co.

XQ. 186. The firm in whose offices we are now taking depositions? A. Yes.

(Testimony of Max M. Cohn.)

XQ. 187. When have you seen him last?

A. I think I bowed to him as I entered this morning.

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 188. Without waiving any of the previous objections heretofore made to the attempted proofs offered by the defendant to show noninfringement of the first claim of the second Cohn patent in view of the previous admission on behalf of defendant in open court that said claim was infringed, I will ask you to look at claim 1 of your second patent and to take the Heinz envelop in suit and compare the two and state whether the combination of features described in that claim is present in or absent [213] from the Heinz envelop?

By Mr. BANNING.—The question is objected to as not asking for the opinion of the witness, but as to a matter of fact, which properly is to be determined by the Court, and not the witness.

A. In looking at the first claim of my second patent, I find the following:

“An advertising device comprising an envelop having a window through which the addressee’s name on an enclosure may show through.”

Referring to the Heinz envelop, I find that it is an advertising device comprising an envelop having a window through which the addressee’s name on an enclosure may show through. The claim states: “Said window being in outline characteristic of some symbol of trade.” Referring to the Heinz envelop

(Testimony of Max M. Cohn.)

we find that it has a window being in general outline characteristic of some symbol of trade, namely, that of a pickle or cucumber, which is specifically shown in the drawing of my patent, Figure 1, and is especially mentioned in the specifications as being "a cucumber [214] the trademark of a well-known manufacturer of a great many varieties of goods," and while the drawing referred to shows the name "John Doe," this name is purely fictitious, the general public knowing that the name "Heinz" was intended, and the only reason that it was not used was on account of the limitations in the Patent Office, which bar the real names of persons or firms. The claim states: "A tinted or colored border surrounding and giving definition to said window." Referring to the Heinz envelop we find a tinted or colored border surrounding and giving definition to the window.

The claim further states: "And permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window." Referring to the Heinz envelop we find permanent advertising matter forming no part of the address appearing through the window and on the face related to and in juxtaposition with the outline of said window. [215]

In my claim and also in my specifications I do not limit myself as to the exact location of the permanent advertising matter, the main feature being the mechanical combination of the advertising matter with

(Testimony of Max M. Cohn.)

the window. I state in the beginning of my specifications, as follows:

“The object of this invention is to so design the window opening and to associate with said window such descriptive matter as will offer novel and unique possibilities for advertising.” Referring to the Heinz envelop we find that it accomplishes the desired result referred to, and is accomplished by the association of the printed matter and the pickle-shaped border. The word “Heinz” taken by itself and not associated with anything else would be meaningless; a pickle-shaped border not associated with any printing matter would have no value as an advertising device because it might mean any pickle manufacturer, but when we take the mechanical combination of these two, namely, the pickle-shaped border or window and the word “Heinz,” we have, and I will now use the language of the specification, “a striking advertisement of a particular brand of goods of a particular merchant or firm.” It is therefore self-evident that the desired object of my patent and the object of the Heinz [216] are identical and produced by exactly the same means. If the person who drew the specifications for my second patent had a Heinz envelop before him, I cannot possibly see how he could have described it more fully or completely, and it is very probable that whoever designed this Heinz envelop had a copy of my specifications before them at the time. Taking the Heinz envelop, I will paraphrase a portion of the specifications beginning at line 37, of the second page, in order to

(Testimony of Max M. Cohn.)

more clearly illustrate my meaning.

"When there is associated with a window opening of characteristic or peculiar design," as in this Heinz envelop, a window in the shape of a pickle;

"A trade name, or some word," in the Heinz envelop, the word "Heinz";

"Or words," and in the Heinz envelop the words "H. J. Heinz Company";

"Usually associated with or relating to the pictorial feature," in the Heinz envelop the pictorial feature being the pickle;

"Every one seeing the envelop is confronted with a striking advertisement of a particular brand of goods of a particular merchant or firm." [217] In the Heinz envelop we see this striking advertisement, and immediately associate it with the Heinz pickle concern. Summing up I find that every element expressed in claim 1 of my second patent appears in the Heinz envelop, and I find no elements in the Heinz envelop which are not expressed in this claim. The location of the printed matter is immaterial, and the fact that the single word "Heinz" is printed on the inside of the envelop but appearing through the window and in association with same does not in any way affect the desired result. As a matter of fact, anyone holding this envelop a few feet away could not tell if the word "Heinz" was printed on the inside or on the face of the envelop. The fact remains that it is clearly related to, "and in juxtaposition with the outline of said window."

Recess. [218]

(Testimony of Max M. Cohn.)

RDQ. 189. In how far, if at all, would the foregoing statement apply or not apply to the combination of the second claim?

A. The foregoing explanation would apply in its entirety to claim 2. I would like to add, however, that in considering the Heinz envelop with regard to claim 1 that the word "Heinz" appears (and I wish you would underline the word "appears," as I wish to emphasize this word), on the face of the envelop, and that I did not limit myself to the fact that it should be printed on the face, in claim 1; the claim simply stating that it should appear and I had in mind at the time I applied for this patent a combination of this character, as I am fully aware of the fact that Heinz' trademark usually shows a pickle with the word "Heinz" appearing within the outline of the pickle. Taking the drawing Figure 1, in my second patent and the Heinz envelop I find nothing in my claims or specifications which limits me to the location of the permanent advertising matter; the object being, as I stated before, to show the association between the permanent advertising matter and the window or border. [219]

RDQ. 190. The defendant has offered in evidence in addition to the Brown United States 1862 patent and the Busch and Boldt British patent, the patents to Tudor, Jacobson, Eneas, Reese and British patents to Johnson, Peace, Hole, Pescheux et al., Leigh, Watts, Smith et al., Cohn et al. and the U. S. Callahan patent; are you familiar with these patents and all of the patents introduced by the defendant?

(Testimony of Max M. Cohn.)

A. I am familiar with all of them.

RDQ. 191. Please state whether any of them, singly or combined, suggest or disclose the combination of your first patent.

A. None of these patents, taken singly or combined, suggest or disclose the combination of my first patent.

RDQ. 192. What would you say with regard to these patents offered by defendant in regard to the same question applied to your second patent?

A. I would make the same response.

RDQ. 193. Inviting your attention to the Brown patent 1862, Mr. Banning, in XQ. 158, page 156, asked you among various other things in the same question, "if you consider that Brown is limited to any specific *method* of manufacturing the paper [220] out of which his envelops are to be made"; "or to any specific *means* or substances for producing the transparent spaces that he desires"; "or to any specific quality of paper to be used." Will you please state what you consider to be Brown's "method" and Brown's "means" and the character or "quality of paper" to be used.

A. In looking over the Brown patent again, I find that the only method described intelligently by Brown is that of taking a piece of envelop, of the proper size and shape and cutting same out of the envelop covering the aperture thus made with transparent paper, or other equivalent transparent covering. This is the only method that is expressed intelligently enough to allow anyone to make an en-

(Testimony of Max M. Cohn.)

velop; all other description being either too vague in its character or impossible in its execution. To exemplify, Brown states: "There may be only a transparent portion B large enough to exhibit the 'direction' through it, and this may be made either by rendering a portion of the envelop or wrapper itself transparent by the same means or substances as employed for making tracing paper." As explained before in my testimony, if Brown undertook to do what he says *might* be done in his patent, he would render the entire envelop transparent. [221] The only other method described by Brown aside from the two just mentioned is as follows:

"Instead of making only a small portion of the envelop or wrapper transparent the whole envelop, or at least the whole face of it may be made transparent."

I can see no method whatever in this last statement of Brown, as the specifications contain nothing in reference to this, aside from what I have just quoted, and it is impossible for me to imagine what method he had in his mind.

As to the means employed by Brown in his patent, the only two means he expresses are that of making paper transparent, "by the same means or substances as employed for making tracing paper or any other in the process of manufacturing the paper"; the other being the means of cutting out a portion of the envelop and covering same with transparent paper.

The only *qualities* of paper to be used, expressed by Brown, are as follows: tracing paper, transparent

(Testimony of Max M. Cohn.)

paper, and an opaque wrapper. The transparent paper is to be used in covering a hole in the opaque paper.

RDQ. 194. Mr. Regenstein said in answer to XQ. 186, page 66, D. R., when speaking of the Transo advertising envelop like Stickney and Heinz, and the reason why more firms did not use this advertising [222] feature, "the extra price is very small, but I think that the main reason why very few people can use the proposition is because *we cannot change the shape of our transparency*, and this peculiar shape can be adapted to very few articles only. Further, Mr. Regenstein says in answer to XQ. 194, p. 68, D. R., concerning Transo envelops: "our transparency is invariably about of the same size and *shape*." Do you know of your knowledge, Mr. Cohn, whether such statements of Mr. Regenstein are substantiated by the facts?

A. I know that this statement is not substantiated by actual facts, as on several occasions I have seen Transo envelops of different shapes, and I have in my possession one which I will produce. (Witness produces envelop.) This envelop shows a transparency or window of oblong shape, with square corners.

By Mr. TOWNSEND.—I offer this envelop produced by witness as Complainant's Exhibit "HH." This envelop bears the return address, Montgomery County Coal Company:

(Testimony of Max M. Cohn.)

TAYLOR SPRINGS COAL.

700-702 Fisher Building,

CHICAGO.

bearing the cancellation postmark, "Chicago, Dec. [223] 11, 4 P. M. 1909." This envelop is wider or higher than it is long, being approximately 5-3/4" wide or high and approximately 4-1/2" long. The window address space extends clear across the face of the envelop and slightly around on the back; the transparency having square corners and the green border also having square corners; the ends of the border not being visible on the face of the envelop.

RDQ. 195. You have testified to the placing on the market in 1904 some 10,000 envelops used by the Zellerbach Company and embodying your invention. Can you state the amount of time and the amount of money you expended in bringing your invention to the point of development represented by those commercial envelops which you have heretofore identified as corresponding to exhibits "L" and "M"?

A. I can. I worked continuously and persistently for over a year, beginning some time in 1903 and ending with the production of these 10,000 envelops in 1904, putting in many nights, many Sundays and several holidays. I never at any time desisted from my efforts, but kept on patiently sticking to the object I had in mind, never quitting [224] until I accomplished the object that I sought. During this period I expended some \$3,000.00, which may not appear to be a great sum to some people but meant a vast

(Testimony of Max M. Cohn.)

amount to a man of my means. This money I used for various purposes, such as the purchase of different chemicals and oils used in making my preparation; also for ink and paper of numerous nature and consistency. Part of this money was also used in paying for labor which was generally at a high rate on account of the work being done on what is termed as "overtime." I also paid to chemists various amounts for work done at my request. I frequently found that after spending much time and money on a certain preparation that the same was useless for my purpose and it was necessary for me to start over again. During this period I did a little work on the envelop described in my abandoned application dated May 9, 1904, but the expenditure of time and money on this particular feature was very trivial.

Recross-examination.

(By Mr. BANNING.)

RXQ. 196. This Montgomery County Coal Company envelop produced by you this afternoon, and offered as exhibit "HH," does not have the words, "Pat. Aug. 9, 1904, Transo Paper Co., Chicago," does it? [225]

A. No. I recognize it as a Transo envelop, because it has the word "Transo" printed on the inside of the sealing flap.

RXQ. 197. This envelop has on it the words, "Brevet  4 Avril 1905," printed on it, does it not?

A. Yes, and to my mind it shows a French patent date of April 4, 1905.

(Testimony of Max M. Cohn.)

RXQ. 198. In answering XQ. 232, Mr. Regenstein stated that patents were "received in England, France and Canada on the Reese patent," did he not?

A. He did, but I think he stated that he only manufactured this character of envelopes in the United States.

RXQ. 199. In answering XQ. 244, Mr. Regenstein stated that he manufactured "here in the United States these envelopes for use in any of those foreign countries," did he not?

A. He did, and in answering XQ. 243 he stated, "we have never manufactured in any country but the United States." The envelop produced by me exhibit "HH," and which called up this discussion was according to Mr. Regenstein's testimony manufactured in the United States and judging from the printed matter on the same [226] already quoted in one of your questions, and the postoffice cancellation stamp, Chicago, Illinois, it was used in the United States.

RXQ. 200. Judging from the size and shape of the envelop, and from the words, "Breveté 4 Avril 1905," printed on it, taken in connection with Mr. Regenstein's statement that he manufactured in the United States envelopes under these foreign patents, would you not think that this particular envelop, exhibit "HH," was like some that he may have manufactured for use in France?

A. I do not know what kind of envelopes, if any, Mr. Regenstein manufactured to be used in France. I do know, however, that I have seen large quantities

(Testimony of Max M. Cohn.)

of Transo envelopes exactly in the same shape as this one, used by the Charles Hadley Company of Los Angeles, California. This company, I believe, has the agency for the Transo envelop for Southern California.

RXQ. 201. The transparent window or portion on this exhibit "HH" is substantially of the same width and length as the transparency or window in the Transo stock envelop, and differs principally from them in the fact that the transparency producing preparation was applied by a rectangular block [227] instead of one rounded at the ends; is not this substantially correct?

A. It is substantially the same as to size with the differences you have mentioned.

RXQ. 202. And the green border on this envelop exhibit "HH" is substantially like the green border on the Transo stock envelop, except that instead of being rounded on the ends it is provided with square corners making it rectangular in shape; is not this substantially correct?

A. It is substantially correct.

RXQ. 203. Is it not true, as stated by Mr. Regenstein, that "we cannot change the shape of our transparency," and that the transparency shape "can be adapted to very few articles only," if we bear in mind that the transparency must in all cases be of a proper and appropriate size and shape to permit the address on the enclosure to be properly exposed or displayed?

A. No. The very shape of the oblong transparency with square corners, shown in exhibit "HH,"

(Testimony of Max M. Cohn.)

suggests to my mind several features by which it could be used to good advantage as an advertising device, and in my previous testimony [228] I mentioned that I had a great number of sketches made, and I recollect that some of these sketches embodied an oblong-shaped window with square corners.

RXQ. 204. I suppose we are easily within conservative limits when we say that probably there are a million different articles of manufacture that are made and sold in this country. If this be so, would you think that Mr. Regenstein is out of the way when he said in answer to XQ. 186 that the shape of the window "can be adapted to very few articles only"?

By Mr. TOWNSEND.—The question is objected to as immaterial, and even assuming the truth of the supposition, it is no defense or excuse for the defendant's infringement or use of a pickle with associated advertising matter. Furthermore, the question and statement has reference to articles of manufacture, while we would call the attention of the counsel to the fact that the patent has reference to *trademarks and trade symbols*. [229]

A. In my former testimony shows that I had several hundred sketches of different kinds prepared which allowed for a suitable size of transparency (suitable for addressing space) in association with various articles, trademarks, symbols of trade, etc. In answer to XQ. 186, Mr. Regenstein stated that he could not change the shape of his transparency. The envelop that I produced shows that he was able to

(Testimony of Samuel E. Selling.)

change the shape, and while the change may only be a slight one, it does not take very much of a change in the shape of the addressing space to give an artist an opportunity for innumerable conceptions in this connection.

MAX M. COHN. [230]

[**Testimony of Samuel E. Selling, for Complainant.**]

Mr. SAMUEL E. SELLING, called on behalf of the complainant, and after being duly sworn, doth depose as follows:

(By Mr. TOWNSEND.)

Q. 1. Please state your full name, age, residence and occupation.

A. Samuel Ely Selling; age, 41; salesman, Illinois-Pacific Glass Co., 2852 Sacramento St.

Q. 2. How long have you been with the Illinois-Pacific Glass Co.?

A. Twenty-three and a half years.

Q. 3. Are you acquainted with Max M. Cohn, the complainant in this case? A. Yes.

Q. 4. How long have you known Mr. Cohn?

A. Close on to 19 or 20 years.

Q. 5. Was Mr. Cohn ever employed by the Illinois-Pacific Glass Company, and if so do you know when he left their employ. [231]

A. Yes, he was employed by the Illinois-Pacific Glass Co., and left in 1903.

Q. 6. Do you know where he went?

A. To A. Zellerbach & Sons.

Q. 7. Has Mr. Cohn at any time ever claimed to you to be the inventor of an envelop of any descrip-

(Testimony of Samuel E. Selling.)

tion? A. Yes, he did.

Q. 8. Will you please state when and where he first brought such matter to your attention, and if he disclosed the nature of that invention to you what was the nature of that disclosure?

A. He showed me the idea at our store on Main Street, and described to me the idea of its benefits, in taking the place of the envelop with a piece of paper pasted therein. He had made several hand samples showing where this would be far better and where it was impossible to be tampered with on account of its being an entire envelop instead of its being a two-piece envelop, as was the old one. This was shortly before he left our employ, and the envelop was made with an oily substance that he had used in the center to give it the transparent effect. If I remember correctly, also, some had [232] a border around them and also some had designs such as a pickle, and I do not remember what other designs were printed on the envelops.

Q. 9. Do you think that if you saw an envelop constructed according to the disclosure made in 1903 by Mr. Cohn that you would recognize such an envelop?

A. I do.

Q. 10. I will show you several envelops which have been introduced here in evidence, displaying them with their faces downward and ask if you can pick out from those an envelop which would correspond to anything you saw or understood from Mr. Cohn's description at that time to be his invention. (COURT

(Testimony of Samuel E. Selling.)

sel lays before witness, face down, exhibits "L," "M," "O," "R.")

(Witness turns over the envelops laid before him and examines their faces, before answering.)

A. This one here marked exhibit "R" was shown me by Mr. Cohn and I recall even the printing thereon, at that time; this being the only one I recognize as having been shown me by Mr. Cohn when he was in our employ. The envelop exhibit "L" was subsequently shown me by Mr. Cohn, some little time after he went into the employ of Zellerbach & Sons. [233] The other two I do not recall ever having seen them.

Cross-examination.

(By Mr. BANNING.)

XQ. 11. Do you mean that this envelop marked exhibit "R," or one like it, was the one shown you by Mr. Cohn while he was in the employ of the glass company? A. One very similar to that.

XQ. 12. What do you mean in your answer by "some little time" after Mr. Cohn entered the employ of Zellerbach & Sons?

A. Within two to three months, possibly less.

XQ. 13. It might also have been more, might it not?

A. No, sir; for the reason I know that I was very much interested in this patent and spoke to him continually on the subject, being very intimate friends I naturally was very much interested in his proposition.

XQ. 14. Do you have any letters, writing or other memorandums that enables you to fix the date when

(Testimony of Samuel E. Selling.)

Mr. Cohn showed you this exhibit "L" envelop?
[234]

A. No, sir. However, I can recall where he mailed me one of those envelops with the pickle designed thereon, and had written a note therein asking me how I liked it.

XQ. 15. Have you that envelop or note that you have just mentioned as mailed to you by Mr. Cohn?

A. No.

XQ. 16. Have you any means of fixing the date when he mailed that pickle envelop to you?

A. No, sir, not more than it was shortly after he went into the employ of Zellerbach.

XQ. 17. You speak of several hand samples that Mr. Cohn showed you. Were they like this envelop exhibit "R"?

A. Not in colors like that as I recall it.

XQ. 18. Were they like it in other respects?

A. I should say yes.

XQ. 19. After Mr. Cohn entered the employ of Zellerbach & Sons was he often over to the office of the glass company?

A. Not that I could particularly mention or recall so far as I am particularly concerned, although I had seen him quite a few times. [235]

XQ. 20. What were your duties as salesman for the glass company while Mr. Cohn was there?

A. Inside salesman—store salesman and manager of the Operating Department.

(Testimony of Samuel E. Selling.)

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 21. Mr. Selling, will you please examine the envelop exhibit "R" and state if you can how the transparent window space is made.

A. As I remember, the hand-made envelops that Mr. Cohn showed me were made with an oily substance which he had been using. As I recall it, the sample exhibit "R" was made on similar lines of the ones he showed me at that time.

(Question re-read.)

A. I cannot describe to you how exhibit "R" was made.

RDQ. 22. Are you familiar with paper generally and the treatment of same? A. No. [236]

RDQ. 23. If it were shown that the transparency of this exhibit "R" was not made by use of an oily substance, or treatment of the paper by oil or the like to render it transparent, would you still be of the opinion that this exhibit "R" was like those hand-made specimens that Mr. Cohn showed you?

A. I should say very similar.

RDQ. 24. I understand, though, that you are not able to tell how the transparency is made in exhibit "R" by simply looking at it. A. No. I am not.

RDQ. 25. Are you satisfied in your mind that Mr. Cohn did in fact before he left the Illinois-Pacific Glass Company describe and show to you his idea of an envelop using oil for making the transparent window and the use of a border?

By Mr. BANNING.—Question objected to as lead-

(Testimony of Samuel E. Selling.)

ing and suggestive.

A. I am thoroughly and positively satisfied that such was the case. [237]

Recross-examination.

(By Mr. BANNING.)

RXQ. 26. Did the envelops which you say Mr. Cohn showed you before he left the employ of the glass company all have rectangular or square-cornered windows, and blue borders around the window?

A. I don't remember whether all of them had it.

RXQ. 27. After Mr. Cohn left the employ of the glass company did he ever show you any of his one-piece window envelops? A. Yes, sir.

RXQ. 28. Did he show you any such envelops during the year 1904?

A. The early part of 1904, I should say.

RXQ. 29. And were they similar in appearance to this envelop exhibit "R"?

A. What do you mean by the entire effect of it?

RXQ. 30. I think my question is plain. What I mean is, did the envelop which Mr. Cohn showed you in 1904 look like this envelop exhibit "R"?

A. I don't recall whether *it the* same. [238]

RXQ. 31. Did the envelops that he showed you in 1904 have rectangular windows and blue colored borders similar to this envelop exhibit "R"?

A. I don't recall that either.

RXQ. 32. When did you first see or Mr. Cohn show you the envelops with the windows or transpar-

(Testimony of Samuel E. Selling.)

ent portion in the shape of a pickle or cucumber or cigar?

A. Shortly after leaving the employ of the Illinois-Pacific Glass Company.

RXQ. 33. Did he show you such envelops during the year 1904? A. Early part of 1904.

S. E. SELLING. [239]

[Testimony of B. T. Bean, for Complainant.]

Mr. B. T. BEAN, being called on behalf of the complainant and first duly sworn, doth depose as follows: (By Mr. TOWNSEND.)

Q 1. Will you please state your full name, age, residence and occupation?

A. My full name is Barton T. Bean; 37; San Francisco; 2656 Larkin Street; Efficiency Engineer.

Q. 2. How long have you been following that profession, Mr. Bean? A. About 15 years.

Q. 3. What is the general nature of your work?

A. My work is to go into manufacturing and other businesses and work out plans of organization systems for doing the work to promote efficiency and simplify matters.

Q. 4. Are you acquainted with Mr. Max M. Cohn, the complainant in this case? A. I am.

Q. 5. How long have you known Mr. Cohn? [240]

A. About 8 years.

Q. 6. Do you recall the circumstances of the beginning of your acquaintance with Mr. Cohn?

A. I do.

Q. 7. Generally, what were they?

(Testimony of B. T. Bean.)

A. I came out to the Coast to make a report and physical examination for the firm of Dunham, Carrigan & Hayden, San Francisco. At that time I was in the employ of the Baker-Vawter Co. of Chicago and the work was done in their behalf. During the time I was working on that firm the Baker-Vawter man here, Mr. Duggit, spoke to me about Mr. Max Cohn, whom he knew, and said that I ought to meet him, as he was quite an ingenious sort of a fellow and had gotten up several unique plans of filing, and that possibly we could get a system contract out of the firm he was employed by. He took me down to the Illinois-Pacific Glass Company where Mr. Cohn was employed and introduced me to him. I talked with Mr. Cohn about my work and he introduced me to other officers of the Illinois-Pacific Glass Company and I spent a day or so going around through the office and factory and studying the conditions with a view of getting a contract. [241] While I was at the Illinois-Pacific Glass Company I went over the plans of their bookkeeping system and general office work with Mr. Cohn and that was the way in which I made his acquaintance.

Q. 8. During the time you have known Mr. Cohn, has he ever claimed to you that he was the inventor of any particular style of an envelop or that he had any patents on the same?

A. At that time Mr. Cohn said that he wanted to show me something in confidence and as I was traveling all over the United States and knew more or less about business conditions and business practices, and

(Testimony of B. T. Bean.)

that he had a new style envelop that he wanted to get my opinion on, and that he would show it to me in confidence, but did not want me to tell anyone about it. He then showed me some rather rough styles of envelops that were translucent or transparent, so that the address would show through the envelop, the writing being hidden by the rest of the paper which was opaque. It was after the style of an Outlook envelop, except that the opening was prepared by some process making it transparent. I remember that I told him that I had never seen anything like it before and that I [242] thought it was a splendid thing, and I further thought that in my judgment there would be a good sale for that sort of an envelop.

Q. 9. Can you describe with any more particularity the construction and appearance of the envelop Mr. Cohn showed you, and if you can, please do so?

A. As I remember, the samples he showed me they were of rather rough construction and looked as if they had been made up by hand. Some of the samples were flat, just blanks, treated with this preparation. The transparent part was surrounded by a sort of a border of cloud effect. I don't remember much about the samples in detail.

Q. 10. Did Mr. Cohn explain the purpose of the border or cloud effect?

A. In talking about the matter I told him that I was surprised somebody had not thought about it before and I figured it was merely some sort of oil that was put on the paper to make it transparent, and he said that it was an oily preparation and that that was

(Testimony of B. T. Bean.)

one of the secrets and that the border was to keep this oil from spreading.

Q. 11. Do you believe that you could recognize such an envelop as you saw then, if you should see [243] it now?

A. I could recognize the type. I would not want to try and identify any of the envelopes or papers I saw at that time.

Q. 12. I will lay out before you 4 specimen envelopes, face down, and which are Complainant's Exhibits "L," "N," "O," "R," and ask you if any one of those envelopes are like the envelopes that you saw in 1903?

(Witness taking the envelopes and examining their face, says:)

A. These are much better envelopes than the ones I was shown. The ones I saw were just roughly cut envelopes. I don't have a very clear recollection of any of the papers I saw at that time, but these two, "N" and "O," are more like the ones than the other two. As I remember it, the envelopes he showed me were drawings, something after this fashion. Referring to "N" and "O." The envelopes themselves are not as clear in my memory as the plan and the talk that we had about the subject. I wasn't so much interested as to the envelop as I was in the idea.

Q. 13. You have stated that this disclosure occurred in the latter part of 1903. Have you any way of fixing that date? [244]

A. My method of fixing that date is by the time I performed the service for Dunham, Carrigan & Hay-

(Testimony of B. T. Bean.)

den at that time. In talking this matter over with Mr. Cohn recently, I was somewhat vague in my own mind as to the exact date, so I wrote to the Baker-Vawter Company and asked them to advise me what date the service was performed for Dunham, Carrigan & Hayden. I received their reply which stated that that service was billed as of October 31, 1903.

Q. 14. Have you the letter from the Baker-Vawter Company referred to?

A. I have. (Witness produces letter.)

By Mr. TOWNSEND.—I ask that the letter produced by witness be read into the record, the letter being as follows:

“Public Accountants and Auditors.

Devisers of Business Systems.

BAKER-VAWTER COMPANY,
Loose Leaf Accounting Forms and Binding Devices.
Chicago, Ill., Feb. 6, 1911.

Mr. B. T. Bean,
c/o Klink, Bean & Co.,
San Francisco, Cal.

Dear Mr. Bean:

Our records show that the contract for Dunham, Carrigan & Hayden was dated August 14th, 1903, [245] and that the date of our invoice to them, which was for fourteen days service was Oct. 31st.

We trust that with this information you will be able to claim the hat.

With kindest regards from the writer,

Yours very truly,

FB. 35.

FOSTER BRANSON.”

(Testimony of B. T. Bean.)

Q. 15. In the above letter, what is meant when it says, "that the date of our invoice to them, which was for fourteen days service was Oct. 31st"?

A. That is the date of the invoice or bill that was rendered by Baker-Vawter Company to Dunham, Carrigan & Hayden for the service I performed here.

Q. 16. Over what period did the fourteen days service extend?

A. I think it extended over the period of September and October, although I wouldn't be positive as to those dates.

Q. 17. Would the fourteen days mentioned necessarily be for fourteen days immediately preceding October 31st, 1903, or did those fourteen days extend over more period than that?

A. They extended over more period than that. The days were not consecutive. [246]

Cross-examination.

(By Mr. BANNING.)

XQ. 18. What is the reference in this letter to the "hat"?

A. I think that I asked the Baker-Vawter Company to decide a bet on a hat as to the time I first came to California.

XQ. 19. Did you have a bet as to a hat with anyone? A. No, sir.

XQ. 20. Did you see Mr. Cohn after he left the employ of the glass company and during the year 1904? A. I think I did.

XQ. 21. Do you know when he left the employ of the glass company? A. I do not.

(Testimony of B. T. Bean.)

XQ. 22. Did Mr. Cohn show you any of his envelops during the year 1904?

A. I don't remember the exact times at which he showed me these envelops during the years 1904, 1905 and 1906, but possibly two or three times during those years he spoke to me about the envelops and showed me some I remember with advertising matter around the border. [247]

XQ. 23. When did Mr. Cohn show you an envelop like this one marked, exhibit "R"?

A. I don't remember. I would not try to identify those envelops.

XQ. 24. Did he show you one similar to this one exhibit "R" on the occasion of your first meeting him when you say he showed you some rough envelops or blanks?

A. I would not try to identify any envelop or paper he showed me at that time. The conversation and talk in regard to it is more clear in my mind than the actual papers looked at.

XQ. 25. You have referred to these few exhibit envelops "N" and "O" as being somewhat of the nature of the rough envelop or blank that you say Mr. Cohn showed you. Can you identify them as representing an envelop that he showed you on the occasion of your first meeting him?

A. As I remember, the envelops and paper showed me they were after that style.

XQ. 26. Can you say as to whether or not they had any clouds in blue or silver around the transparent portion? A. I could not. [248]

(Testimony of B. T. Bean.)

XQ. 27. Can you say positively that they had any border whatever around the transparent portion?

A. My memory is very vague as to the actual envelopes and papers submitted. I did not pay very much attention to the samples after the idea was given me.

XQ. 28. Are you willing to state positively that the envelopes and blanks which Mr. Cohn showed you, as you say in 1903, had any border whatever around the transparent portion?

A. As I remember them, they did.

XQ. 29. Will you be positive as to whether they had or had not?

By Mr. TOWNSEND.—The witness has already answered the question repeatedly, by saying that according to the best of his recollection they did have that feature and the question is therefore objected to as mere repetition.

A. I can only answer according to the best of my recollection.

XQ. 30. Then, you cannot state positively whether the envelopes or blanks that Mr. Cohn showed you in 1903 as you have explained, had borders or not around the transparent portion, can you? [249]

A. Only from the conversation that I remember about the oil to be put on the paper being kept from spreading in some way.

XQ. 31. I am not asking you now about the conversation. What I want to know is, whether you are willing to state positively that the envelopes and blanks which you say Mr. Cohn showed you had

(Testimony of B. T. Bean.)

borders around the transparent portion.

A. I am only willing to state that in so far as I recollect they did have. My recollection is vague as to the details of the samples.

XQ. 32. The envelops which Mr. Cohn showed you during the years 1904, 1905 and 1906, had borders of some sort printed around the transparent windows, did they not?

A. I don't remember any more distinctly about those envelops except those which embodied advertising features than I do about the others.

XQ. 33. Do you remember the color of the borders around the envelops which had the advertising features that you have mentioned?

A. I remember seeing pickles, or cigars, but I don't remember color, or anything like that. [250]

XQ. 34. Why did Mr. Cohn ask you to keep the matter secret when he showed you the first envelop or blank that you remember of seeing?

A. Why I presume it was on account of the patent matters.

XQ. 35. I suppose he was desirous of keeping that secret until he had gotten his patent; is that what you understood? A. That was my impression.

XQ. 36. How did the paper of the blanks and envelops which Mr. Cohn showed you correspond with the paper out of which this envelop R was made?

A. I don't remember.

XQ. 37. Without this letter from the Baker-Vawter Co., dated February 6, 1911, would you be able to say within six months or possibly a year, as to

(Testimony of B. T. Bean.)

when it was that Mr. Cohn showed you those rough envelopes and blanks? A. Yes, sir.

XQ. 38. Now that you have refreshed your memory by this letter you fix the date as in October, or in the fall of 1903, do you? A. Yes, sir. [251]

XQ. 39. If you had not written to the Baker-Vawter Co. and got this letter, would you have any memorandum or writing or anything that would enable you to fix the approximate time of your talk with Mr. Cohn? A. Yes, sir.

XQ. 40. Why did you write to the Baker-Vawter Company for this letter?

A. Because it was the easiest way to get the information.

XQ. 41. When did you last talk with Mr. Cohn about the subject matter of these envelopes?

A. Last night.

XQ. 42. Had you ever talked with him before that? A. Yes, sir.

XQ. 43. During the last few months?

A. Once or twice.

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 44. After completing your job with the Dunham, Carrigan & Hayden Co. in 1903, did you remain on the Coast or did you return to Chicago?

A. I returned to Chicago. [252]

RDQ. 45. When did you next come out to California?

A. Some time the early part of the next year, 1904.

(Testimony of B. T. Bean.)

RDQ. 46. When did you locate permanently in California?

A. Some time in 1904. I think July 1st my resignation was accepted by the Baker-Vawter Company, as I desired to remain out in California.

RDQ. 47. Did Mr. Cohn mention to you at any time in 1903 while you were engaged on the Dunham, Carrigan work that he contemplated leaving the glass company?

A. I believe that was one of the reasons why he urged the company to employ my services, as he was going away shortly; in fact, I believe he told me that he was going to leave and take a position with the Zellerbach Paper Company.

RDQ. 48. Are you positive in your mind of the disclosure by Mr. Cohn to you in September or October of 1903 of an envelop with a window space formed by oil and the use of a border for the purpose as you have expressed it, of keeping the oil from spreading and of his showing you specimens illustrating his idea? [253]

By Mr. BANNING.—Question objected to as leading.

A. I am positive that the conversation I have testified to took place the first time I came to California.

RDQ. 49. And to the best of your recollection the conversation was illustrated as you before testified.

A. It was.

BARTON T. BEAN. [254]

March 1st, 1911.

RQD. 50. Mr. Bean, referring to the letter of the

(Testimony of B. T. Bean.)

Baker-Vawter Company, February 6, 1911, introduced above, and in which reference is made to the "hat," have you this morning a copy of the letter written Baker-Vawter Company, and to which their letter of Feb. 6, 1911, was a reply?

A. Yes, sir. (Witness produces.)

By Mr. TOWNSEND.—I ask that the letter offered by witness be read into the evidence and be considered in connection with the Baker-Vawter letter, previously referred to, as follows:

"San Francisco, Cal., January 31st, 1911.

Mr. Foster Branson,
c/o Baker Vawter Co.,
Chicago, Illinois.

Dear Mr. Branson:

A friend and I were disputing the other day as to the year I came to California to do the Dunham, Carrigan & Hayden work. I am under the impression that it was in 1903.

If it is not too much trouble I wish you would look up the year and month I was out here on that trip as I would consider it a personal favor.

Thanking you in advance and with kind regards,
I am, Yours very truly," [255]

RDQ. 51. Referring to the disclosure of this invention by Mr. Cohn in 1903, would you have been able to make an envelop embodying the invention?

A. Well, if I had known the formula that was used to make the paper transparent I could have applied the idea.

BARTON T. BEAN. [256]

(Testimony of A. Vanderzwiep.)

March 1st, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

[Testimony of A. Vanderzwiep, for Complainant.]

Mr. A. VANDERZWIEP, being called on behalf of the complainant and being first duly sworn, doth depose as follows:

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age, residence and occupation?

A. A. Vanderzwiep; age, 27 years; 3626 20th Street, San Francisco; bookkeeper for Zellerbach Paper Company.

Q. 2. How long have you been with the Zellerbach Company?

A. I have been there since April 15, 1903.

Q. 3. Do you know Mr. Max M. Cohn, the complainant in this case? A. Yes, sir.

Q. 4. How long have you known Mr. Cohn?

A. Since he first came to A. Zellerbach & Sons, predecessors to the Zellerbach Paper Company. [257]

Q. 5. Do you know when that was?

A. In the neighborhood of about six months after I came.

Q. 6. Do you know about the patented envelop of Mr. Cohn, which forms the subject matter of this controversy? A. Yes, sir.

Q. 7. Have you any knowledge concerning the use at any time by the Zellerbach Company of any of Mr. Cohn's envelops? A. Yes, sir.

(Testimony of A. Vanderzwiep.)

Q. 8. Will you state generally what that knowledge is?

A. In the latter part of 1904, by the location of my office, I remember that these envelops were introduced to me to be used on bills and statements, and having charge of mailing all bills and statements at that time I am positive that in the neighborhood of about 10,000 were used prior to January 1st, 1905, at which time my office was moved to another portion of the store in A. Zellerbach & Sons. The envelop shown to me to which I refer was of about a regular correspondence size of a blue dotted [258] appearance on the outside and a light manila color on the inside with A. Zellerbach & Sons' card in the upper left-hand corner of the face. A portion of the face in the center thereof was transparent and was surrounded by a fancy oblong border. That is the envelop right there (pointing to exhibit "L"). The reason that I am positive that in the neighborhood of 10,000 of these envelops were circulated is that more than two lots of statements were sent out contained in these envelops, and the issue of each lot was in the neighborhood of from 2,000 to 2,500; furthermore, we had at that time letter-heads printed so that they could be contained in this particular envelop, and were mailed generally all over the United States; being used by the wrapping paper department. These envelops were also used for mailing bills, of which on an average of about 300 to 450 a day were made out. I remember the supply of these envelops soon gave out

(Testimony of A. Vanderzwiep.)

and inquired for more at the time, but as same did not show up I had to resort to another style the "Outlook" envelop, which had the transparent paper pasted in back of the opening in the face. Another incident which makes me remember that it was in my office at the rear part of the store, is by the way it was introduced to me [259] by the manager of the wrapping paper department at that time, as he seemed to be very much enthused over it, and said that I should use these in the future in sending out all bills and statements.

Q. 9. Were these Cohn envelops which you used at that time, satisfactory?

A. They satisfied me, and I heard no complaints.

Q. 10. Do you recall the form of these statements which your firm used at that time and which were enclosed in these Cohn envelops?

A. At the same time when these envelops came in Mr. Cohn showed me a statement which could be folded in a way so that the same could be inserted in the envelop in a manner by which the address could be seen through the transparent part of the face of the envelop.

Q. 11. Look at the enclosure in the Cohn envelop, exhibit "L" and see if that is like in form with the statements showed you or the statements you were using?

A. No, sir; not as to the printing matter, [260] but a statement of similar size that could be folded to obtain the same results.

Q. 12. My question did not relate to the printing

(Testimony of A. Vanderzwiep.)

matter, because this appears to be printed in the name of the Simplex System Co., and I would presume that you would not be sending out statements with their imprint. I merely had reference to the general form and method of folding, and does your answer to the previous question as to folding and results correspond to this Simplex statement?

A. Being the same style of statement it would naturally have to be folded the same and be the same, otherwise it would not fit the envelop, and let the address come in the same place, so as to be seen from the outside.

Cross-examination.

(By Mr. BANNING.)

XQ. 13. What was the reason that no more of these Cohn envelops were ordered or used after the 10,000 lot was exhausted?

A. I was never told the reason.

A. VANDERZWIEP. [261]

[Testimony of John C. Tooker, for Complainant.]

Mr. JOHN C. TOOKER, being called on behalf of the complainant, and being first duly sworn, doth depose as follows:

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age residence and occupation?

A. John C. Tooker; age, 36; residence, 224 Shotwell Street, San Francisco; occupation, printing pressman and foreman of the press-room of F. H. Abbott, #545 Mission Street, San Francisco, California.

(Testimony of John C. Tooker.)

Q. 2. How long have you been with the Abbott Printing-house? A. Over 12 years.

Q. 3. Are you acquainted with Mr. Max M. Cohn, the complainant in this case? A. I am.

Q. 4. How long have you known Mr. Cohn?

A. Nearly 8 years.

Q. 5. What were the circumstances of your first meeting Mr. Cohn? [262]

A. I was then foreman in the employ of Mr. Abbott at 316 Battery Street, San Francisco, and Mr. Cohn came into the office to have some work done. As foreman I handled that work. The work was an envelop that he was trying to perfect. He explained to me as best he could what he wanted me to do, and I agreed to take this matter up and handle it for him. He came into the office and had me work on this matter for him for some time, I should say nearly a year. The work was done on "overtime," as we call it, that was, my time. It was a matter that I took up myself. I was paid for doing the work.

Q. 6. What was the general nature of that envelop, and in making your explanations you may continue your statement as to what you did in connection with it, giving such dates and events as operate to fix these matters in your mind?

A. The envelop was envelop to be used in mailing matters. The feature of it was that it would be an opaque envelop with a transparent space through which it would be possible to see the writing of a portion of the matter enclosed therein. It was

(Testimony of John C. Tooker.)

printed from a zinc block with a hole to allow for the preparation which would be applied that [263] would make the paper transparent in the vacant space in the zinc. The metal was so etched out that it left a border which would cover around the place where this application for transparency was to be applied. We experimented in this matter for nearly a year. I was working on this process around the holidays. My reason for knowing that it was at that time is that some of the money paid to me for my labor I used in buying presents. The time put in between then and the time that I printed 10,000 of these envelops finished, was nights, Sundays and holidays. The exact number I could not state, for all of which time I was paid by Mr. Cohn. The method under which we worked was varied. We tried many different ways to accomplish the result that he had in mind. The preparations for transparency he supplied and were many. It was no easy task to get the desired result. First, we had trouble in getting the desired inks and the preparations; I mixing some of the inks and Mr. Cohn supplying me with some that he got outside. All of the mixture for transparency was supplied by Mr. Cohn. There was quite a bit of trouble in getting the printing press to handle these different preparations, which required a good deal of time and thought. We had a great many difficulties to overcome, the main one being to get the desired transparency [264] which he finally succeeded in getting. In getting this preparation we met with

(Testimony of John C. Tooker.)

an obstacle which caused us a good deal of hard labor. That was to keep the preparation from spreading all over the sheet, or running, as the printer terms it. We put on the preparation on the paper first from a wood block, then we used rubber and different kinds of strawboard and card-board; also pulp wood, but they seemed to carry too much of the preparation which spread out on the outside of the printing space, giving it a tendency to flow further over the sheet. We finally tried felt, which seemed to work more satisfactorily with a little help in "make-ready." There was a tendency to spread from this preparation, which would have to be overcome by what printing pressmen call "make-ready," which I managed to overcome by cutting a piece of pulp board and gluing to the cylinder to press the sheet tightly on the felt, which would make the preparation sink into the paper and still permit you to carry less of the preparation, thereby having that much less pushed on the outside of the felt, so that it would not spread. This piece of pulp board was cut smaller than the felt, which made the impression on the paper a little away from the border, thereby allowing a little spread so that the preparation would not flow beyond the border, and thereby make the paper transparent further than [265] Mr. Cohn had figured in working out this proposition; his idea being, as I understood, to have the envelop entirely opaque, with the exception of the transparent space in between the border. We finally got to the place

(Testimony of John C. Tooker.)

where we could turn out these envelops with the preparation covering the desired space and not spreading too far. He then gave an order for 10,000 of these envelops to be printed, which I printed about September, 1904. I base the date of the time of printing on the fact that I took my vacation at that time, and some of the money which he paid me for my services went toward paying for my vacation. I do not remember of having done anything for him after that time. The envelops were printed and delivered to him and as far as I know all used up.

Q. 7. How do you fix this vacation period referred to?

A. To me that is a very easy matter. I had not up to this time in September, 1904, had a vacation for five years. I had worked steadily and continuously for the same house. As foreman of the press-room I had a great many things to try my nerves. At that time I was very nervous. I stated to Mr. Abbott that it was absolutely necessary for me to take a vacation, and he agreed that it was. [266] I had figured on going on this vacation about the last of June, but the foreman of the composing-room had also planned on a vacation and at the time I spoke I was a little late, he having asked for the same time, so I finally decided that I could hold out until September, when I had a three weeks' vacation. That I am more sure as to the date, I had no other vacation after that until the fire of April, 1906, which gave all the residents of San Francisco

(Testimony of John C. Tooker.)

a vacation that they didn't look for. Labor Day, which is always a vacation day for a Union man, came during that time, and I was expected to parade with my Union. My not being in the city that day gave me the privilege of not parading, or saved me \$10.00. September the 9th, Admission Day, also came about that time, so I also saved two days' pay that I would have lost if I had not so planned to take this vacation. I say "saved," because had I taken my vacation in July I should have lost the \$12.00 that I would have been paid for those two days.

Q. 8. Would you recognize any of the work done or envelops made at that time for Mr. Cohn if you saw one now? A. I would.

Q. 9. I show you Complainant's Exhibit "L" envelop, and ask you if you can identify that envelop in any way? [267]

A. Yes. (After examining the same.) There was a mark showing apparently a scratch on the zinc plate leading from the border out, which I figured at the time was possibly done in washing off the zinc with a rag that had a pin or a button on it. I thought at the time that Mr. Cohn would think I was very careless, but I learned afterward that it was the fault of the man who made the cut. I have had this happen by a careless boy, which compelled me to pay for a cut that was thereby ruined.

(By Mr. TOWNSEND.)

Q. 10. This defect in the block which you refer to is indicated by the white line at the left end of the envelope, exhibit "L" and has been marked

(Testimony of John C. Tooker.)

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(Testimony of John C. Tooker.)

a vacation that they didn't look for. Labor Day, which is always a vacation day for a Union man, came during that time, and I was expected to parade with my Union. My not being in the city that day gave me the privilege of not parading, or saved me \$10.00. September the 9th, Admission Day, also came about that time, so I also saved two days' pay that I would have lost if I had not so planned to take this vacation. I say "saved," because had I taken my vacation in July I should have lost the \$12.00 that I would have been paid for those two days.

Q. 8. Would you recognize any of the work done or envelops made at that time for Mr. Cohn if you saw one now? A. I would.

Q. 9. I show you Complainant's Exhibit "L" envelop, and ask you if you can identify that envelop in any way? [267]

A. Yes. (After examining the same.) There was a mark showing apparently a scratch on the zinc plate leading from the border out, which I figured at the time was possibly done in washing off the zinc with a rag that had a pin or a button on it. I thought at the time that Mr. Cohn would think I was very careless, but I learned afterward that it was the fault of the man who made the cut. I have had this happen by a careless boy, which compelled me to pay for a cut that was thereby ruined.

(By Mr. TOWNSEND.)

Q. 10. This defect in the block which you refer to is indicated by the white line at the left end of the envelope, exhibit "L" and has been marked

(Testimony of John C. Tooker.)

with the letter "x," this letter being applied now in your presence; is that correct? A. That is.

Q. 11. Does that same defect appear in envelop exhibit "P"? A. It does.

Q. 12. And also on exhibit "M"?

A. Yes, sir. It appeared on all the envelops of that 10,000 lot. [268]

Q. 13. Do I understand that this work for Mr. Cohn was completed and all these envelops made similar to exhibit "L," before you went on your vacation in 1904?

A. They were all delivered to Mr. Cohn before I took my vacation.

Q. 14. Were the envelops folded when delivered, or were they delivered flat?

A. No. They were delivered by me flat. Mr. Cohn subsequently had them folded.

Q. 15. You have said that you worked from the holidays until September, 1904, for Mr. Cohn. What holidays do you mean, and when do you fix that period at?

A. I mean the holidays called "Christmas" and "New Year" of 1903 and January 1st, 1904, and also Decoration Day, 1904 (May 30th). The Sundays and nights, as I said before, I could not give the dates, but from the Christmas holidays up to September, 1904, I put in a great deal of time. [269]

Q. 16. About what is the earliest date that you began working on this envelop of opaque stock with an oily preparation for Mr. Cohn?

A. The exact date I could not tell. It was before

(Testimony of John C. Tooker.)

the Christmas holidays of 1903.

Q. 17. I understood you to say that you worked about a year on the idea.

A. Altogether about a year.

Q. 18. Was there ever any time during that period where the matter was abandoned or given up?

A. No.

Q. 19. You simply kept at it till you solved the difficulty; is that correct?

A. Off and on from the time we commenced until we printed the 10,000 envelops we worked trying to perfect what Mr. Cohn had in mind—the transparent envelop.

Q. 20. Did you try different borders?

A. We had several different zincos to print from for the coloring of the sheet of paper.

Q. 21. What do you mean by the coloring?

A. I mean for printing the colored ink on the sheet of stock, not the preparation used to make it [270] transparent.

Q. 22. What were the general shapes that you used in the way of borders or windows?

A. One was shaped similar to a pickle. One was shaped, cigar-shaped. One was what I called “ragged-edged” or scalloped, and the oblong-shaped envelop marked “L.”

Q. 23. I hand you an envelope face down, and ask you to examine it and see if you can identify it.

A. (Witness examines the envelop and looking at its face, said :) I can; and looking at the envelop I see the outline of the piece of pulp board which

(Testimony of John C. Tooker.)

I used on the cylinder of the press to smash in the preparation on the paper, making it transparent. This envelop has the words "Cremo Cigar" in white letters on its face. You will notice in looking at the envelop a ragged edge appears where the impression of the preparation was applied to the envelop, and not covered by the green border. That was done by me to press the preparation into the paper. This was one of the first lots I printed for Mr. Cohn, the exact date I cannot give, because we were some time working out this preparation of transparency. [271]

By Mr. TOWNSEND.—The envelop exhibit "FF" is the one to which the witness has referred, in his last statement.

Q. 24. Do you remember if this envelop exhibit "FF," "Cremo Cigar," was made before or after the finished envelop exhibit "L"?

A. It was made before the finished envelop exhibit "L."

Q. 25. I show you two envelopes, face down, and ask if you recognize them, or either of them.

A. (Witness examining the envelopes and looking at their faces says:) I recognize both these envelopes. (Referring to exhibits "N" and "O" with the blue and silver cloud effects.) On the blue and silver covered envelopes I note a mark on the left-hand side of the envelopes like a streak, running up and down, which was done at the time the envelop was printed by a sheet of paper being caught in printing and smashing, as we call it, the top sheet

(Testimony of John C. Tooker.)

on the cylinder, leaving two creases in the top sheet, and the tympan, thus making a streak in the printing of the cut.

Q. 26. How early do you fix the printing of these envelopes with the blue and silver cloud effect borders, exhibits "N" and "O," [272] or the printing of any blanks with oil and a cloud effect border?

A. The exact date I could not give. The preparation on these envelopes have a tendency to run a little more than those printed at the time when I delivered the 10,000 perfect envelopes to Mr. Cohn. It shows me that it was in one of the earlier stages of using the preparation.

Recess. [273]

Q. 27. Do you know whether or not you had actually applied to an opaque sheet an oily preparation for making the transparency for Mr. Cohn and used a border around this transparent space, for the purpose of an envelop, in 1903?

By Mr. BANNING.—Question objected to as leading.

A. Yes; I would say that in those impressions that I made around the holidays I used a preparation given me by Mr. Cohn, which made opaque paper transparent, but I don't say that it was the one printed like the cut the 10,000 was printed from, but that we had the transparency figured out at that time I am sure.

Q. 28. But how about a border?

A. Yes, there was a border on the cut that covered the paper around the transparency.

(Testimony of John C. Tooker.)

Q. 29. In answering Q. 6, you speak of the difficulties encountered and stated how you overcome one of the obstacles, "by cutting a piece of pulp board and gluing to the cylinder to press the sheet tightly on the felt, which would make the preparation sink into the paper and still permit [274] you to carry less of the preparation—this piece of pulp board was cut smaller than the felt, which made the impression on the paper a little away from the border, thereby allowing a little spread so that the preparation would not flow beyond the border, and thereby make the paper transparent further than Mr. Cohn had figured in working out this proposition." Could you illustrate this matter? A. Yes, sir.

Q. 30. Does that drawing represent the idea?

A. This ink line denotes the sheet of paper going around the cylinder, marked A. This denotes the tympan, marked B, where I glued down the piece of pulp board, marked C. This piece of pulp board C used for pressure on the sheet A, which is to be printed over the felt with the preparation. The felt is marked D. The felt D was glued to a block, marked E, and locked on the bed of the press.

By Mr. TOWNSEND.—I offer in evidence the sketch just used by the witness in his explanation, and ask that it be marked Complainant's Exhibit "GG." [275]

Q. 31. Did the use of these oily preparations or inks for borders cause you any trouble or extra work about or on the presses used?

A. Yes. In washing up for a color it usually re-

(Testimony of John C. Tooker.)

quires two washes. In washing up for the preparation it became necessary to go over the press again and again and the rollers more particularly. The least bit of color on the press or rollers had a tendency to discolor the transparency and make it darker or opaque. It became necessary in using this preparation to make the press absolutely, or as near as possible clear. We found another difficulty in using some of the preparations, and it became necessary in order to make the preparation flow as freely as was necessary to use gas-stoves under the press; heating the plate and making the preparation run out smoothly. We finally got these things so that the preparation run perfectly. The transparency that we reached in the earlier stages was inclined to be more dirty and mottled, not smooth. I am sure that around the holidays of 1903 was the time when we first used the stoves; it being the winter time; and the preparation not having inclination at that time to flow freely. [276]

Cross-examination.

(By Mr. BANNING.)

XQ. 32. Did you keep any book or memorandum of any sort showing the time that you were at work for Mr. Cohn?

A. I did not, and if I had it would have been lost in the fire.

XQ. 33. Look at this envelop marked exhibit "R," made of transparent paper, and see whether you have any recollection about it?

A. This is a parchemyn paper. That is printed on

(Testimony of John C. Tooker.)

with one color, the paper in itself being naturally transparent, the coloring in it being used to make it opaque.

XQ. 34. Do you recognize the printing on that envelop as some of your work?

A. I done some printing on paper of this kind for Mr. Cohn, but I cannot say that I printed that particular envelop.

XQ. 35. Here is another envelop exhibit "Q," with the words "Perfecto Cigar" on it; please look at that envelop and see whether you recognize it.

A. I never had anything to do with the printing of that piece of paper. [277]

XQ. 36. Why is it that we see some red around the edge of the cigar outline on this Perfecto envelop?

A. That makes a border, and finishes the end of the transparency having a tendency there to make it opaque and stop the transparency.

XQ. 37. Do you mean that it is the definition or outline to the cigar shape?

A. It finishes the cigar shape; yes, sir.

XQ. 38. About how wide is the line around the shape of the cigar in this Perfecto envelop?

A. From $1/32''$ to $1/40''$; it varies.

XQ. 39. As I understand your description of the piece of pulp board, it was made smaller somewhat in its dimensions than the felt for applying the oily preparation, so that when the paper was run through the press there would be a greater pressure exerted on the felt coincident with the pulp board than around its edges, which extended beyond the board;

(Testimony of John C. Tooker.)

is that correct? A. It is.

XQ. 40. In printing this lot of 10,000 envelops for Mr. Cohn that you have described, were the blanks printed one at a time? [278]

A. The sheets were printed one at a time.

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 41. Was it customary to keep office records of work done in the shop before the fire?

A. Yes, it was.

RDQ. 42. Have you any of those office records now?

A. The office records that I had were destroyed in the fire of April, 1906.

JOHN C. TOOKER. [279]

[Testimony of Edward Epting, for Complainant.]

Mr. EDWARD EPTING, being called on behalf of the complainant and being first duly sworn, doth depose as follows.

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age, residence and occupation?

A. My name is Edward Epting; my age is 41; my occupation is artist, and residence Burlingame, California.

Q. 2. Are you acquainted with Mr. Max M. Cohn, the complainant in this case?

A. I have known him for many years.

Q. 3. Do you know where Mr. Cohn was employed before he took up his present connections with the Zellerbach Co.?

(Testimony of Edward Epting.)

A. He was employed at the Illinois Pacific Glass Company.

Q. 4. Where were you employed at that time?

A. At the same place.

Q. 5. In what capacity and what department?

A. I was in the label department. I had charge of the art department. [280]

Q. 6. Did Mr. Cohn ever consult with you in regard to an envelop? A. He did.

Q. 7. Just what were the circumstances?

A. He had an envelop that he was getting up, which was transparent with a coating, and with a border around it. Mr. Cohn got me to make him up some designs at the time he started in with his envelops. Mr. Cohn had the envelops fixed so that if you put a statement in you could read through them and see the inside characters and addresses.

Q. 8. What was the nature of these designs he asked you to get up?

A. There were quite a number of different designs gotten up. Some with shading around the edges and some with all the solid color in the back, and quite a number of different ones. I don't remember all the different ones I did get up.

Q. 9. Did Mr. Cohn explain to you what the designs were for?

A. Well, one was to have a border around the edge to hide the bleeding of the preparation he put on the envelop. [281]

Q. 10. Was this before or after Mr. Cohn left the Glass Co.?

(Testimony of Edward Epting.)

A. Before Mr. Cohn left the glass company.

Q. 11. I show you an envelop, face down, and ask you to examine the same, and see if you recognize it or anything about it?

A. (Witness, after looking at the envelop and examining the face of the same, said :) I believe I made the same design, or I did make one almost similar. Well, I got up the design with the cloud work around it and had a solid edge all around so as to hide the bleeding of the preparation.

(The above explanation has been in regard to Compl. Ex. "N," with the blue cloud effect.)

Q. 12. After you made the drawings with the cloud effect like exhibit "N," do you know what was done with the drawings? A. We had zincos made.

Q. 13. Did you have anything to do with the getting out or ordering of the zincos?

A. I ordered them.

Cross-examination.

(By Mr. BANNING.)

XQ. 14. Did you make any sketches for zincos for Mr. Cohn [282] of other or different designs from the one shown in this blue cloud effect on this envelop exhibit "N"?

A. I made many others.

XQ. 15. Did you make sketches for zincos for printing solid borders on the envelops?

A. I did.

XQ. 16. I show you an envelop marked exhibit "R," and ask you if you recognize any of your work on that envelop "R"?

(Testimony of Edward Epting.)

A. I believe that is some of my work, sir.

XQ. 17. Did you see any envelops made of transparent stock like this exhibit "R"?

A. Not other than this one just shown me, that I remember.

XQ. 18. Look at this envelop, marked exhibit "L," and see whether you recognize any of your work on it. A. I do.

XQ. 19. For how long a time were you making sketches to make zincos for Mr. Cohn?

A. I could not exactly answer that, but I know that I was making them while Mr. Cohn was working for the Illinois-Pacific Glass Company. [283]

XQ. 20. And for how long a time after he left the glass company?

A. I have done some work for him, but I don't remember just how much I did, as I was busy all the time, and it is pretty hard for me to remember.

XQ. 21. You did some work for him in that line after he left the glass company, as I understand it?

A. Yes, some.

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 22. Were the zincos for the cloud effect made before or after Mr. Cohn left the Illinois-Pacific Glass Company.

A. They were made before Mr. Cohn left the glass company.

Recross-examination.

(By Mr. BANNING.)

RXQ. 23. Do you have any memorandum or writ-

(Testimony of Edward Epting.)

ing of any kind by which you fix the time that you did work for Mr. Cohn?

A. No, I have no memorandum, but remember the circumstances at the time because I used to bring the work to Mr. Cohn when he was working downstairs.

EDWARD EPTING. [284]

San Francisco, March 2, 1911.

[Testimony of William Dolge, for Complainant.]

WILLIAM DOLGE, being called on behalf of the complainant and being first duly sworn, doth depose as follows:

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age, residence and occupation?

A. William Dolge; age, 34; residence, 240 10th Ave., San Francisco; occupation, Certified Public Accountant.

Q. 2. Before entering on your present work as a Certified Public Accountant, where were you employed?

A. I came to San Francisco in August, 1903, and *that* I have been successively employed by the California Wine Association, the Illinois-Pacific Glass Company, Guggenhime & Company, and Lester Herriek & Herriek, Public Accountants.

Q. 3. When did you enter the employ of the Illinois-Pacific Glass Co.?

A. About October 13, 1903.

Q. 4. In what capacity?

A. Chief Accountant. [285]

(Testimony of William Dolge.)

Q. 5. Whom did you succeed at the Illinois-Pacific Glass Co., if you succeeded anyone?

A. Max M. Cohn.

Q. 6. Do you refer to Mr. Cohn, who is here present and who is the complainant in this case?

A. I do.

Cross-examination.

(By Mr. BANNING.)

XQ. 7. When did you make the acquaintance of Mr. Cohn?

A. I must have met Mr. Cohn for the first time in the first two weeks of October, 1903.

WILLIAM DOLGE. [286]

Stipulation [Concerning Testimony, Etc.].

It is stipulated by counsel for the parties respectively, that as soon as convenient and practicable the complainant's counsel will have the testimony and exhibits taken at this session beginning February 23d, 1911, returned to the Examiner in Chancery, the Hon. H. M. Wright, to be by him certified and filed with the Clerk of the U. S. Circuit Court; that when filing the complainant's testimony with the Clerk, the Examiner shall also file with the Clerk the testimony and exhibits deposited with him on behalf of the defendant, so that all of the testimony and exhibits in the case may be duly on file; that an order of publication may be obtained by complainant's counsel at such time as he may desire; that a hearing in Chancery before such Circuit Judge, or Judge holding the Circuit Court may be had at such time as the com-

plainant's counsel can arrange for the same, either in San Francisco, or elsewhere in the Ninth Circuit, at any time after April 15th, 1911; which does not interfere with any hearing by either counsel hereto in U. S. Circuit Courts of Appeals; that complainant's counsel will notify defendant's counsel at as early a date as practicable, when a hearing may be had and sufficiently in advance of such hearing to enable defendant's counsel to arrange to attend from Chicago, Illinois; that strict compliance with the Rules relating to the service of printed briefs on counsel, respectively, will not be insisted upon, but [287] that all such briefs shall be served prior to the hearing herein, and with sufficient, reasonable time to each party to reply to the brief of the other party. Service of briefs may be by the ordinary postoffice channel.

CHAS. E. TOWNSEND,

Counsel for Complainant.

THOMAS A. BANNING,

Counsel for Defendant.

San Francisco, March 2d, 1911. [288]

[**Examiner's Certificate to Testimony of Max M.
Cohn et al., etc.**]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

I hereby certify that the foregoing depositions contained in pages numbered 46 to 251, both numbers inclusive, being the proceedings upon the taking of testimony in rebuttal in the cause entitled "Max M. Cohn, Complainant, vs. H. J. Heinz Company, De-

pendant, In Equity, No. 15,204, in the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California," were returned to me promptly after the taking thereof by complainant's counsel in accordance with the stipulation contained on page 47 and pages 250 and 251, together with complainant's exhibits marked as follows: Complainant's Exhibits "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," "U," "V," "W," "X," "Y," "Z," "AA," "BB," "CC," "DD," "EE," "FF," "GG" and "HH," inclusive, and the said depositions, proceedings and exhibits are herewith by me returned, the exhibits being returned separately, identified by the respective letters, together with my signature. Said exhibits are the exhibits referred to in said depositions.

I further certify that previous to giving their testimony the said witnesses Max M. Cohn, S. E. Selling, B. T. Bean, A. Vanderzwiep, John C. Tooker, Edward Epting and William Dolge were by me sworn to tell the truth, the whole truth and nothing but the truth in said cause; that the reading and signing of said depositions were waived by the respective counsel, and that I have retained said depositions for the purpose of delivering the same to the clerk of the court for which they were taken. [289]

I further certify that at the same time when said depositions before mentioned were returned to me there was deposited with me by Charles E. Townsend, Esq., complainant's counsel, a certain bound volume of depositions and proceedings taken before Frances M. Frost, Notary Public at Chicago, Illinois, entitled

“United States Circuit Court, Northern District of California, Max M. Cohn vs. H. J. Heinz Company, In Equity, No. 15,204, Defendant’s Record,” to be returned and filed with the clerk of said court by me, and I herewith return the same.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 22d day of March, 1911.

H. M. WRIGHT,

Examiner in Chancery of the Circuit Court of the
United States, Ninth Judicial Circuit, Northern
District of California.

[Endorsed]: Published and Filed Jun. 2, 1911.
Southard Hoffman, Clerk. By J. A. Schaertzer,
Deputy Clerk. [290]

*Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

Testimony taken for final hearing on the part of the defendant, this first day of December, 1910, at the offices of Banning & Banning, Suite 1632 Marquette Building, No. 204 Dearborn Street, Chicago, Illinois, before Frances M. Frost, a Notary Public in and for Cook County, Illinois, beginning at ten

(Testimony of Julius Regenstein.)

o'clock A. M., pursuant to the annexed notice.

Present, on the part of the complainant, Charles E. Townsend, Esq., and on the part of the defendant, Thomas A. Banning, Esq.

[Testimony of Julius Regenstein, for Defendant.]

JULIUS REGENSTEIN, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Julius Regenstein; age, 48; 5523 Kenmore Avenue, Chicago; manufacturer of envelopes.

Q. 2. What is the name of your company that manufactures envelopes?

A. Transo Paper Company.

Q. 3. What is your official position or connection with the Transo Paper Company?

A. I am the president of the Transo Paper Company.

Q. 4. What kind of envelopes does your company, by which I shall refer to the Transo Paper Company, manufacture? A. Transo envelopes. [291]

Q. 5. Do you mean envelopes provided with a transparent portion or window through which the name and address of the party to whom a letter is being sent may be read? A. I do.

Q. 6. The defendant in this case has been sued for infringement of the Cohn patents by the use of envelopes having transparent windows and with the

(Testimony of Julius Regenstein.)

word "Heinz" printed on the envelope so as to show through the transparent window when the envelope is empty, and with a return card in the upper left-hand corner reading: "Return in 5 days to H. J. Heinz Company, 37-39 Washington St., San Francisco, Cal." Please state whether your company manufactured and furnished or sold such envelopes to the defendant. A. We did.

Q. 7. Those envelopes, of which one has been introduced in evidence by the complainant, were also provided with a green border around the transparent window, with the external lines of the border shaped, apparently, in the form of a cucumber. Was that also true of the envelope that you furnished to the defendant? A. It is true.

Q. 8. I show you an envelope which Mr. Wright, before whom the complainant's testimony was taken, has certified to be a true copy of exhibit "C," which was offered in evidence by the complainant as representing the envelopes used by the defendant. I show you this certified copy of exhibit "C" and ask you to look at it and see whether it represents the kind of envelopes which your company sold to the defendant, and about which I have asked you in the last two or three questions?

A. This is the envelope we furnished the H. J. Heinz Company.

Q. 9. Please state whether your company, while manufacturing the envelopes which you sold to the Heinz Company, was also manufacturing window envelopes for the public generally.

(Testimony of Julius Regenstein.)

A. We are manufacturing and selling such envelopes to the [292] public generally.

Q. 10. And was that true while you were manufacturing and selling the envelopes complained of to the defendant? A. It is true.

Q. 11. I believe your company has been manufacturing and selling window envelopes for several years. Is that correct? A. That is correct.

Q. 12. Was it so manufacturing and selling prior to the time that you sold the defendant the envelopes complained of? A. Yes.

Q. 13. I show you an envelope having a transparent window, but with no printed matter whatever on its face, and ask you to look at it and state whether it represents the kind of window envelopes that your company was making for the public generally prior to the time that it made the envelopes for the defendant, complained of in this case.

By Mr. TOWNSEND.—Objection is reserved if it is intended to convey by the question that only the envelopes similar to exhibit “C” representing the outlining of a cucumber or pickle is considered to be infringed, because I wish to state now that an envelope such as presented to the witness is deemed to infringe the Cohn patent exhibit “A.”

A. It represents such envelope.

By Mr. BANNING.—Defendant’s counsel offers in evidence the envelope shown to and identified by the witness, and asks that the same be marked “Defendant’s Exhibit Transo Company’s Stock Envelope.”

(Testimony of Julius Regenstein.)

Q. 14. Referring to the "Transo Company's Stock Envelope," please explain briefly how such envelopes were made.

A. In making the Transo envelope, we first in one operation print the inside tint and ring, on large sheets each 29x54 inches, each sheet containing blanks for 24 individual [293] envelopes. After the sheet is printed, as stated before, we on a separate machine print the oil which represents the transparent window. After the paper is thus prepared with transparent windows, the same is cut up in the usual way into envelope blanks and then made into envelopes.

Q. 15. As I understand from your answer, this printing that you speak of is done on a press of some sort. What kind of press is used, if I am right in my understanding?

By Mr. TOWNSEND.—Objected to as irrelevant and immaterial.

A. The ring and the inside tint are printed on a rotary press, and the oil is printed on a so-called cylinder press.

Q. 16. Are these printing presses?

A. They are printing-presses.

Q. 17. As I understand, the transparent window in the envelope is caused by applying to the paper, at the desired portions, some kind of oil or similar preparation; is that correct? A. That is correct.

Q. 18. You may state whether the places on the cylinder press to which the oil, as I will term it for convenience, is applied, are raised above the other

(Testimony of Julius Regenstein.)

surface of the press; or what the fact may be.

By Mr. TOWNSEND.—Objected to as immaterial.

A. The plate from which the oil is printed is higher than the bed of the press.

Q. 19. How is the oil applied to these elevated portions on the bed of the press?

A. It is applied in the same manner as ink is applied to a printing press—by rollers.

Q. 20. I will ask you to tell us whether the transparent windows in the envelopes complained of, which, for convenience, I will hereafter refer to as “Heinz” envelopes, and by [294] which I will have reference to exhibit “C,” are printed on the same presses that you use for applying the oil to the company’s stock envelopes?

A. They are printed on the same presses.

Q. 21. When you came to make the Heinz envelopes, was any change made in the size or shape of the elevated portions on the bed of the press, which you were using to apply the oil to make the transparent windows of the company’s stock envelopes?

By Mr. TOWNSEND.—Objected to as leading and furthermore as irrelevant and immaterial.

A. We used the same plates to make the Heinz envelopes.

Q. 22. As a matter of fact, is there any difference in the size and shape of the transparent windows in the Heinz envelopes and in the company’s stock envelopes?

(Testimony of Julius Regenstein.)

By Mr. TOWNSEND.—Objected to as irrelevant and immaterial.

A. There is no difference.

Q. 23. When your company came to make the Heinz envelopes, what changes or modifications did it make in the press for printing them, as to the inside of the envelope and the ring around the transparent window?

A. Our inside tint plate was changed to what we called mortised and in place of the tint which appears through the window in the stock envelope, we inserted the line or word "Heinz." In regard to the ring, we changed our what we call oval plate to a plate which shows as an outline the shape of a pickle.

Q. 24. Was any change made in the form or size of the transparent window?

A. There was no change made whatsoever.

Q. 25. The outline that you referred to in your answer to my [295] preceding question was applied at what part or portion of the ring surrounding the transparent window?

By Mr. TOWNSEND.—Objected to as leading, and furthermore as indefinite, and even if made definite is immaterial.

A. In our regular oval shape, the outlines are perfect, representing an oval. In the matter of the Heinz envelope we changed this perfect outline to have the outline take the shape of a pickle.

Q. 26. By "outline" do you mean the outside margin or edge of the ring surrounding the transparent window?

(Testimony of Julius Regenstein.)

By Mr. TOWNSEND.—Objected to as leading, and furthermore as immaterial.

A. By outline I mean the extreme end or edges of the design.

Q. 27. Without changing the inside edge or margin of the ring?

A. Without changing the inside edge or margin of the ring.

Q. 28. You have read the two Cohn patents sued on in this case and understand them, have you?

A. I have.

Q. 29. Referring to the second Cohn patent, by which I mean the one applied for last and as a division of the other, I find that both of the claims call for an envelope having a window “through which an addressee’s name on an enclosure may show through.” Look at the drawings of this second Cohn patent and tell us what part is referred to as the window which permits the addressee’s name to be seen through it.

A. The part which is marked 2 in the drawings.

Q. 30. The transparent part, is it?

A. The transparent part.

Q. 31. The claims of this second Cohn patent further say that said window is “in outline characteristic of some symbol of trade.” Referring to the transparent portion as the “window,” I will ask you to state whether or not the window in the [296] Heinz envelope is “in outline characteristic of some symbol of trade.”

By Mr. TOWNSEND.—The question is objected

(Testimony of Julius Regenstein.)

to for lack of proper foundation. That is, no foundation has been laid showing the competency of this witness to pass on the question propounded. Furthermore, it calls for the legal conclusion of the witness and therefore usurps the function of the Court; and, furthermore, with respect to Claim 1, it is an apparent attempt to impeach their own evidence and their own admission made in open court that the combination of Claim 1 of this second patent 824,908, exhibit "B," is embodied in its entirety in the envelope here sued on and identified as complainant's exhibit "C."

A. The window in the Heinz envelope does not represent in shape any symbol of trade.

By Mr. TOWNSEND.—I move to strike out the answer, on the grounds stated in my objection.

Q. 32. Both claims of this second Cohn patent, in addition to requiring the window to be in outline characteristic of some symbol of trade, further call for "permanent advertising matter," or "permanent printed matter on the face of the envelope," which advertising matter or printed matter the claims say is "related to and in juxtaposition with the outline of said window"; and in the first claim this permanent printed matter is required to be "on said tinted border" of the window. Disregarding the return card on the Heinz envelopes, is there, in the Heinz envelopes, any "permanent advertising matter" "appearing on said tinted border," or is there any "permanent printed matter on the face of the envelope" "co-operating with the outline of the

(Testimony of Julius Regenstein.)

window to indicate a particular brand of goods”?

By Mr. TOWNSEND.—Question objected to as leading; [297] as an incomplete statement of each claim; as confusing the two claims; as calling for the legal conclusion of the witness; and furthermore that the witness has shown no proper qualifications enabling him to testify to the matters of fact; furthermore, as an obvious attempt to impeach, contradict, or otherwise modify their admission referred to in respect to Claim 1, as being infringed.

A. The only advertising matter which appears on the Heinz envelope is the outline shape of a pickle.

By Mr. TOWNSEND.—I move that the answer be struck out on the grounds stated in the objection, and furthermore as not responsive.

Q. 33. The first claim of this second Cohn patent, after speaking of the tinted or colored border, calls for “permanent advertising matter forming no part of the address appearing on said tinted border, and related to and in juxtaposition with the outline of said window.” Is there anything of this kind on the Heinz envelopes, or had there ever been?

By Mr. TOWNSEND.—I make the same objection as made to the last question.

A. There is not nor ever was.

I move that the answer be struck out on the grounds stated in the objection.

Q. 34. The second claim of this second Cohn patent, after requiring the window to be in general outline characteristic of a symbol of trade, calls for “permanent printed matter on the face of the envel-

(Testimony of Julius Regenstein.)

ope, related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods." Is there anything of this kind on the Heinz envelope; or has there ever been? [298]

The question is objected to as leading; as an incomplete statement of the claim; no proper foundation laid; calling for the legal conclusion of the witness; ignoring the doctrine of equivalents.

A. There is nothing on the Heinz envelopes but the outline of a pickle.

Q. 35. Is the word "Heinz," leaving out the return card on the corner, on the tinted border surrounding the transparent window?

Objected to as leading; no proper foundation laid; and incompetent and immaterial.

A. It is not.

Q. 36. Is the word "Heinz," leaving out the return card, on the face of the envelope, or where is it?

Objected to as leading, and no proper foundation laid, and as not a proper statement or attempted construction of the claim.

A. The word "Heinz," as stated, does not appear on the face of the envelope, but appears on the inside of the bottom flap.

Q. 37. Under what patent is your company manufacturing envelopes?

Objected to as irrelevant and immaterial and leading.

A. Under the Reese patent.

Q. 38. Give us the date and number of the Reese

(Testimony of Julius Regenstein.)

patent, and the date of the application for the same.

Objected to as irrelevant and immaterial; furthermore, on the ground that if this Reese patent is referred to for purposes of anticipation it has not been set up in the answer or otherwise noticed to the complainant, as required by section 4920, U. S. Revised Statutes. [299]

A. The date of the Reese patent is August 9, 1904, No. 766,902. Application filed January 15, 1904.

Q. 39. Do you know whether George Reese, named in this Reese patent, is living?

Objected to as irrelevant and immaterial.

A. He is dead.

Q. 40. Is the Julius Regenstein mentioned as an assignor of a half interest of this Reese patent yourself?

Same objection.

A. Yes.

Q. 41. If you know, state what Reese's business was at or prior to the time of his application for this Reese patent.

Same objection. Furthermore, as calling for the opinion of the witness and as mere hearsay.

A. Mr. Reese was a lithographic designer and was in charge of the lithographic department of the American Can Company of Chicago.

Q. 42. This Reese patent appears to have been applied for, as you have already said, January 15, 1904. About when, with reference to that date, did you, either by yourself or in association with Mr. Reese or others, begin work upon or preparation for the

(Testimony of Julius Regenstein.)

manufacture of envelopes having transparent windows formed by the application of oil to a portion of their surfaces?

Objected to as leading; no proper foundation laid; on the further ground that the patent itself is the best evidence of its date of issue, number, and date of application.

A. In November, 1903.

By Mr. TOWNSEND.—I move that the answer be struck out, as neither it nor the question have any bearing on the issues in the present case. [300]

Q. 43. Do you remember receiving a letter that we wrote you December 16, 1903?

Objected to as irrelevant and immaterial.

A. I remember that at the time Mr. Reese and I called on you, that you said you would investigate the matter which we laid before you, and I remember that we received some information from you, but I do not remember at this time whether I received a letter or whether the information was given to me verbally.

It is moved that all that portion of the answer preceding "I do not remember at this time" be struck out, as not responsive to the question.

Q. 44. I will ask you to examine your letter files, when you return to the office, and see whether or not you find a letter from us dated December 16, 1903, addressed to yourself, and referring to an envelope shown by yourself and Mr. Reese to us, and in the meantime I will show you our letter-press copy book and ask you to look at a copy of a letter directed to

(Testimony of Julius Regenstein.)

you and dated December 16, 1903, and ask you to state what the fact may be as to whether or not, at the time of the interview referred to in such letter, you and Mr. Reese called at our office and showed us an envelope, as referred to in such letter.

Objected to as leading; further, as irrelevant and immaterial and no proper foundation laid.

A. Mr. Reese and I called at your office and showed you such an envelope as referred to in your letter.

By Mr. BANNING.—Defendant's counsel shows the letter-press book of his firm, Banning & Banning, to complainant's counsel, and shows him the copy of a letter addressed to Julius Regenstein, and dated December 16, 1903, and inquires whether he has any objection to the use of such copy in [301] place of the original, with the understanding that the witness will examine his files and produce the original letter if he is able to find the same.

By Mr. TOWNSEND.—There is no objection to the use of the copy in place of the original, providing it is shown satisfactorily that the witness actually received the original.

Q. 45. The letter which I have shown you as it appears in our letter-press book reads as follows:

“December 16, 1903.

Mr. Julius Regenstein,
135 Adams Street,
Chicago, Ill.

Dear Sir:

We have looked up the patent on the ‘Outlook’ Envelope, of June 10, 1902, and find that it was issued

(Testimony of Julius Regenstein.)

to Americus F. Callahan, of Chicago. The patent has one claim and it is limited to 'an envelope having a comparatively opaque face and a display opening therein having a transparent covering,' etc. From this you will see that there must be an 'opening' in the envelope and that it must have a 'covering' which is separate and distinct from the body of the envelope. It would appear, therefore, that the envelope shown by yourself and Mr. Reese will not infringe the Callahan patent. It has no 'opening' and no 'covering' for such opening.

We consider that the envelope which you showed us is patentable over the envelope claimed in the Callahan patent. We further consider that the paper manufactured with opaque portions and transparent portions properly spaced and arranged to permit the envelope blanks to be cut out is also patentable. These two patents, however, will have to be applied for [302] and taken out separately, inasmuch as envelopes form one class in the Patent Office and paper another. Two patents will have to be taken if it is desired to cover both the envelope and the paper from which it is made.

Yours very respectfully,

BANNING & BANNING."

Please state what kind of an envelope it was that you showed to us and that is referred to in the above letter.

The question is objected to as irrelevant and immaterial and that it has not been shown that any such alleged envelope embodied the patented combination

(Testimony of Julius Regenstein.)

of the patent here sued on, and therefore any such testimony is irrelevant and incompetent to either show anticipation or any prior art.

A. We showed you an envelope with a transparent window on the face.

Q. 46. What formed or made the transparent window on the face of the envelope you showed us in December, 1903?

Same objection.

A. As to the shape, I do not remember whether the window had the shape of an oval or a square. The use of oil made the transparent window.

Q. 47. If you know, please state who made the envelope that you showed us in December, 1903.

Same objection.

A. Mr. George Reese.

Q. 48. The Reese mentioned in this Reese patent?

A. Yes, sir.

Recess. [303]

Q. 49. How was the envelope which you showed to us in December, 1903, as respects a ring or border around the window, as shown in your company's stock envelopes?

Same objection.

A. The envelope which I showed you in December, 1903, had no ring around the transparent window.

Objection to last question is withdrawn.

Q. 50. When did you and Mr. Reese begin to make envelopes with a transparent window, dating, say, from the time you showed us such envelope in December, 1903?

(Testimony of Julius Regenstein.)

Objected to as leading and assuming a fact not proven or established by the record.

A. We started to make transparent envelopes immediately after we saw you.

Q. 51. By transparent envelopes, do you mean envelopes with transparent windows? A. I do.

Q. 52. Beginning, say, with the first of January, 1904, please tell us what you did, giving your operations in their regular order, so far as you can.

Objected to as indefinite, irrelevant and immaterial.

A. During the first part of January, 1904, we made envelope blanks transparent by the use of oils, creating a window. This work was done on a Universal printing press. After the blanks were made transparent, it showed immediately that no matter what oils we used, the oil would bleed or be out of register. In other words, extending over the intended surface represented by the face of the printing block. As soon as we found out early in January that the oil was found to bleed some, as old printers, we decided that we had to go back to our old trick and print a border which was intended to cover such bleeding of the oil which could not be prevented. [304] We had at that time used various sizes and colors of blocks, and this feature of experimenting did not consume more than one or two days.

Q. 53. The blocks that you refer to in your answer were which ones—the ones applying the oil or the ones applying the ring or border around the window?

A. The block or printing plate is a common expres-

(Testimony of Julius Regenstein.)

sion used by printers, and in both cases I referred to printing plates.

Q. 54. You speak of making the blocks of different sizes. Which blocks do you refer to there?

A. I refer to printing plates for printing the ring. And speaking of sizes, I refer to the width of the border.

Q. 55. Do I understand that you tried printing plates or blocks for the rings that printed the rings of different widths, that is, broader or narrower, around the window?

Objected to as leading.

A. Broader or narrower.

Q. 56. What was the difficulty with the first rings that you printed, that caused you to try different sizes or widths for the rings?

A. The first rings we printed were too narrow, and we found it safer to make the rings slightly wider.

Q. 57. You say you did your first work in January, 1904, on a Universal press. Where was this located, if you remember?

A. This press was located in the print-shop of the American Colortype Company, corner of Roscoe and Racine Streets, Chicago.

Q. 58. After you had increased the width of the ring or border, how did you find the envelopes?

Objected to as indefinite, irrelevant and immaterial.

A. The increasing of the width of the border was more satisfactory. [305]

Q. 59. I suppose that the more an oil spreads or

(Testimony of Julius Regenstein.)

bleeds, the wider or broader the rings needs to be; is that the case?

Objected to as leading, as being the testimony of counsel and not of the witness.

A. The ring, as I stated, is printed to cover the bleeding of the oil. At times the ring will not do the work and the oil will far extend over the ring of the envelope, and spoil the envelope.

Q. 60. In what way does the spreading of the oil spoil the envelope, beyond impairing its appearance, if at all?

Objected to as leading.

A. The spreading of the oil does not interfere with the usefulness of the envelope, but spoils its clean appearance.

Q. 61. When would you say that you had envelopes made or completed with transparent windows and with borders or rings around the windows, as you have explained in the last few answers?

Objected to as not shown that this witness ever made or constructed such an envelope, and assuming something not established by the record.

A. During January, 1904.

Q. 62. You may state the fact, whatever it may be, as to whether or not you yourself personally assisted or had anything to do with the making of these envelopes with rings or borders and transparent windows, as you have explained, in January, 1904.

A. I suggested the printing of the ring, and my workmen under my direction done the work.

Q. 63. Did you see it being done? A. I did.

(Testimony of Julius Regenstein.)

Q. 64. Do you know whether any of those old envelopes, showing [306] your first application of the ring or border, around the transparent window, are still in existence? A. They are.

Q. 65. Look at these two envelopes that I now show you, and state what they are, if you know.

A. The envelopes I hold in my hand are some of the very first envelopes we made in January, 1904.

Q. 66. These two envelopes which you have identified appear to have different colored borders. Please tell us about that.

Objected to as irrelevant and immaterial, and for lack of proper foundation.

A. We had tried various inks in the first place to satisfy ourselves as to the proper color-effect, and also to get the proper covering ink to be sufficiently opaque.

Q. 67. Referring to this envelope which has the lighter border of the two, what colored ink was that originally? A. White ink.

Q. 68. And what was the color used for the other envelope ring? A. I should say a light olive.

Q. 69. Referring now to the transparent window, shown in these two envelopes which you have identified, how does it compare in shape and size with the transparent window in the company's stock envelope and in the Heinz envelopes?

The question is objected to as leading, and assuming that these two specimen envelopes introduced or referred to, rather, last by the witness show or repre-

(Testimony of Julius Regenstein.)

sent a commercial envelope with a transparent window.

A. The shape and size of the window of the envelope in question is practically the same as in the Heinz envelopes.

Q. 70. What would you say as to the similarity in size and shape [307] of the printing blocks, by which the oil was applied to these two old envelopes, and the blocks for applying the oil to the company's stock envelopes and the Heinz envelopes?

Objected to as irrelevant and immaterial.

A. The size and shape of blocks used for printing the oil on the envelopes in question is practically the same as appearing in the stock envelopes.

Q. 71. From the time you began in January, 1904, to the present time, has there been any substantial change in the shape and size of the blocks for applying the oil to produce the transparent windows?

A. No change of consequence.

I move to have the answer struck out as not responsive to the question and being the conclusion of the witness as to what is consequential and inconsequential.

Q. 72. Have there ever been any blocks for applying the oil, used by you or your company, different in shape and size from those used for applying the oil in these old envelopes and for applying the oil in the Heinz and stock envelopes?

Objected to because the envelopes of Heinz and the old envelopes, so called, show they are made from different sized blocks.

(Testimony of Julius Regenstein.)

A. No change of consequence.

Q. 73. If the same blocks were used, but the width of the border or ring changed, would there be any difference in the apparent size of the window or transparent portion?

A. If the same blocks were used for the window, the window would be the same size.

Q. 74. Would not the size of the window or transparent [308] portion which appeared on the envelope, depend somewhat upon the inside size of the ring, so that if a broad ring were used, with a smaller area within its border, would not the transparent portion that appeared after the ring was applied, be correspondingly reduced?

Objected to as leading, and furthermore as incompetent and immaterial, and furthermore assuming, if reference is had to the old envelopes, that they have a transparent window.

A. If the width of the border is enlarged towards the window, the plate which is to print the window would have to be made correspondingly smaller.

Q. 75. If the border were carried further out as well as further in, would there be any necessity for lessening the size of the printing blocks for applying the oil?

Objected to as irrelevant and immaterial.

A. In carrying the border further out, no change would be necessary, but if the border should be carried too far in, the size of the oil printing block would have to be changed.

Q. 76. How do you determine, as a practical matter, how wide or broad the ring should be?

(Testimony of Julius Regenstein.)

Objected to for lack of foundation or qualification of the witness.

A. The ring should be at least a quarter of an inch wide, to be safe.

Q. 77. It must be wide or broad enough to cover the creeping of the oil, if you desire to obscure or cover up such creeping, must it not? A. Yes.

Q. 78. Counsel has once or twice intimated that the windows in these old envelopes were not transparent. Without going into any question of relative transparency, I will ask you to look at the inclosure in one of them and state whether [309] you can read the words on the inclosure through the transparent window. A. I can.

By Mr. BANNING.—Defendant's counsel now offers in evidence the two envelopes identified by the witness, and asks that the same be marked Defendant's Exhibits January, 1904, Envelopes No. 1 and No. 2. No. 1 being applied to the envelope in which the ring is formed of white ink.

By Mr. TOWNSEND.—The receipt in evidence of Defendant's Exhibits January, 1904, Envelopes No. 1 and No. 2, is objected to as irrelevant and immaterial.

Q. 79. After you and your associates, or whoever worked with you, had made these old envelopes in January, 1904, what did you do further toward getting them ready for the market or toward entering upon the business of manufacturing and selling envelopes with transparent windows, like those in controversy in this case?

(Testimony of Julius Regenstein.)

Objected to as leading, and calling for the self-serving statements, opinions, and conclusions of the witness.

A. After the border matter was settled in January, 1904, we gave our attention, up to this day, to the perfecting of the transparency of the window.

Q. 80. Do I understand that the matter of improving and perfecting the transparent portion of the envelopes was a difficult matter?

A. A very difficult matter.

Q. 81. Without going into details as to the preparation of the oil or whatever it is that you use, you may state what difficulties you found in that matter, if any.

A. The difficulties in preparing the windows properly were found on account of atmospheric conditions, nonelastic oils, and various other causes.

Q. 82. You may state what the fact may be as to losses of envelopes through the sticking of the sides together, where the transparent windows were formed, or matters of that kind? [310]

A. We have found and experienced in 1906 that the transparent window would stick to the back of the envelope, and have spoiled at least forty to fifty million envelopes in that manner.

Q. 83. You may state whether your company has much money invested in the business of manufacturing the transparent window envelopes, or has spent much money for that purpose, from first to last?

A. The loss to our company in perfecting envelopes is over \$100,000.00.

(Testimony of Julius Regenstein.)

Q. 84. How far do you consider that your company has brought the manufacture of these transparent envelopes to a condition where they are practical and satisfactory to the public?

A. Our envelope is now considered the most perfect transparent envelope in existence, and has a sale in this country as well as in foreign countries.

Q. 85. To whom, in your opinion and from your knowledge of the facts, is due the credit of bringing the manufacture of transparent window envelopes, like those in controversy, to a condition where they are practical, useful, and satisfactory to the public?

By Mr. TOWNSEND.—While we are willing to concede the utility, practicability, and popularity of the envelope here in controversy, the question is objected to as calling for the mere opinion of the witness.

A. The credit is due to Mr. Ernest Sauerman and myself.

Q. 86. Mr. Sauerman is one of your co-laborers or associates, is he? A. Yes.

Q. 87. Did you ever know of any envelopes like those in question being on the market, that were manufactured by complainant in this case?

A. I do not. [311]

Q. 88. Do you know of any other concern in the country, outside of your company, that is manufacturing the transparent window envelopes, like the ones in controversy in this case?

A. To my knowledge, I am the only manufacturer, and have never seen any one-piece transparent en-

(Testimony of Julius Regenstein.)

velopes made by any one else in this country.

Q. 89. Mr. Regenstein, what was your business or work before you took up the matter of these transparent window envelopes with Mr. Reese?

A. I was the Western General Manager of the American Colortype Company.

Q. 90. What kind of work did that company do?

A. The American Colortype Company were the originators and producers of the finest three-color printing in America.

Q. 91. Give us briefly a statement as to how three-color work is printed. I am only asking as to the printing end of the operation, and am not specially asking about the preparation of the plates to secure three-color effects.

Objected to as irrelevant and immaterial and as having no bearing on the issues of the patent case.

A. Three-color printing is done or printed from three half-tone plates or duplicates of such half-tone plates. The first impression is made from the plate with yellow ink; after the yellow impression is made, in some cases within four hours, and other cases within twelve hours, the next plate is printed with red ink over the yellow; then the sheet is left unprinted for twelve hours and then finished up by printing the third plate with blue ink over the yellow and red.

Q. 92. Then, as I understand you, the paper is passed three times through the press?

A. That is correct. [312]

Q. 93. In case there is not a perfect registration

(Testimony of Julius Regenstein.)

in running the paper through the press for the different colors, or in case the plates vary in size, what condition is the margin or edge of the picture or whatever the three-color work represents, left in?

Objected to as leading; as immaterial; and furthermore is incompetent to show anticipation of the subject matter here in issue, by any such testimony.

A. In case the three plates are not absolutely of one size, or that the feeding of the printing-press is done poorly, or in cases where the paper, on account of atmospheric conditions, changes its size, the colors used will overlap on the edges of the picture.

Q. 94. You may state whether or not that overlapping or irregular registration of the colors at the edges is a matter of indifference or an objectionable thing.

Same objection; and furthermore as calling for the opinion of the witness.

A. It is objectionable.

Q. 95. What, if anything, was done in the three-color printing, where, owing to the causes you have mentioned, the edges or margins of the picture were left in an unsatisfactory or objectionable condition, to remove or cover up or conceal the irregularities around the margins of the picture?

Objected to as irrelevant, incompetent and immaterial.

A. Where the customer is particular and is willing to pay the price in order to make it a first-class job, a border is printed around such imperfect three-color picture, and, invariably, this border is made

(Testimony of Julius Regenstein.)

deliberately of such a size that part of the border will cover the spreading or bleeding of the three colors. [313]

Q. 96. How long has that, to your knowledge, been the practice in three-color printing?

Same objection.

A. To my personal knowledge, this has been done for the last twenty years, and I believe I can say that this idea of printing borders to cover imperfections in printing was known to the old wood engravers two hundred years ago.

I move that all that portion of the answer after "twenty years" be struck out as not responsive to the question.

Q. 97. Of what utility was this border that was printed on three-color pictures beyond covering up and concealing and giving a definite outline?

Objected to as irrelevant, immaterial, and incompetent.

A. The purpose is a useful and ornamental one.

Q. 98. In what way did the border on color pictures serve the purpose that the border serves on these one-piece transparent window envelopes?

Objected to as leading in the extreme, and assuming a fact not proven or apparent from the record.

A. For the same purpose stated before—useful and ornamental.

Q. 99. In what way, in the case both of the three-color pictures and these one-piece transparent window envelopes, is the border useful and ornamental?

A. In one case, the one-piece envelope, the oil is

(Testimony of Julius Regenstein.)

creeping, bleeding, and overlapping, and in the other case the colored inks are creeping, bleeding, and overlapping.

Q. 100. In both cases, the objection to the creeping, bleeding, or overlapping, is removed by the use of the border, is it?

Objected to as irrelevant and immaterial.

A. In the case of the three-color work, the creeping, bleeding, and overlapping, is removed, but not in all cases, [314] as far as the one-piece transparent window is concerned.

Q. 101. What difference is there in the purpose or object for which the border is used, in the three-colored pictures and in the one-piece transparent window envelopes?

Objected to as irrelevant and immaterial, and on the further ground that a combination claim cannot be shown to be anticipated or *limited* by the mere fact that an element of the combination may have been old, or that there may have been some analogous use of an element in another art.

A. None whatsoever.

Q. 102. In both cases, as I understand, it is to cover up and conceal what might otherwise be an unsightly or objectionable margin; is that correct?

Same objection.

A. That is correct.

Q. 103. Three-color work is done by printing presses and printing operations, is it? A. It is.

Q. 104. Is that also true in applying the border

(Testimony of Julius Regenstein.)

or ring around the transparent portion of these envelopes?

Objected to as leading, incompetent and immaterial.

A. That is true.

Q. 105. And in both cases the border is formed with some kind of an ink, is it?

A. The border is printed with ink.

Q. 106. If you have present here any samples of three-color work that will illustrate or show the use of the border, as you have described, please produce the same.

Objected to as irrelevant and immaterial, and on the grounds that anticipation or limitation of the claims in issue cannot be proven or shown by such line of examination. [315]

A. I have.

Q. 107. This book which you have handed me is entitled on the outside of the front cover: "Osborne Art Calendars for 1900," and on the first page I find at the top "Annual Catalogue, 1900," and at the bottom of the page I find "Copyright, 1899, The Osborne Company, 253 Broadway, New York." What do you know about the publication of this book or calendar?

Objected to as irrelevant and immaterial and not competent to show any prior art, as far as the present case is concerned.

A. This book was published in 1899 by the Osborne Company, of New York.

Q. 108. You may state whether you had knowl-

(Testimony of Julius Regenstein.)

edge of its publication at that time.

A. I had no knowledge.

Q. 109. Please examine this book and state whether or not you find in it any of your own work?

Same objection.

A. In regard to this book published by the Osbourne Company, I cannot tell at this time which of the plates, if any, were made by the American Three-Color Company. At the time this book was published, the Osbourne Company of New York were not a part of the American Colortype Company, which was organized, I believe, in 1901.

I move that the answer be struck out as not responsive to the question, and on the further ground that the witness has stated that he had no knowledge of the publication of this book at the time it is purported to have been published.

Q. 110. If you know, please tell us how long the Osbourne Company has been publishing Art Calendars similar to the one we are discussing.

A. I cannot state definitely, but I believe about fifteen [316] years.

Q. 111. Please point out some representative picture in this book or art calendar that will illustrate the use of a border for covering up and concealing imperfect or objectionable margins, and giving definite outline or definition to the picture; and also some picture that will illustrate the objectionable margins of the pictures, which have been left exposed or uncovered by the nonapplication of a border to cover them.

(Testimony of Julius Regenstein.)

Objected to as leading; as incompetent to show any prior art; and on the further ground that no anticipation can be shown or proven by this as a printed publication, as the same has not been noticed to the complainant, as required by statute.

A. A specimen in which the plates overlap appears in the plate No. 4654, opposite page 16; and a plate on which the olive green tint border is printed over the margin appears on page 38, Continental Building & Loan Association Calendar.

Adjourned until Friday, December 2, 1910, ten o'clock A. M.

Chicago, Illinois, December 2, 1910.

Parties met pursuant to adjournment. Present as before.

Q. 112. You have pointed out two illustrations in this Osborne Art Calendar for 1900, opposite page 16 and on page 38, to illustrate the running or overlapping of the colors at the edges or margins of the picture, and the covering and obliteration of such ragged or objectionable edges, by printing a border around and over the same. In selecting these two illustrations, have you meant that they were the only illustrations of such work in the book? [317]

Objected to as not a correct statement of the testimony of the witness; as leading and suggestive; and furthermore as being irrelevant and immaterial.

A. In this book are a number of prints or subjects representing both kinds.

Q. 113. I notice in this picture on page 38 that the olive green tint, if that is a correct description of it,

(Testimony of Julius Regenstein.)

appears darker in a narrow strip or border around the colored portion of the picture. Why is there this difference in appearance of the tints, if you know?

Objected to as irrelevant and immaterial.

A. This line in question is darker than the balance of the border on account of printing the tint over the three colors.

Q. 114. In answering Q. 108, which asks you whether you had knowledge of the publication of this book at the time it purports to have been published in 1899, you stated that you had no knowledge. How long have you known of the publication, by the Osborne Company, of books similar in kind to this particular one before you?

Objected to as irrelevant and immaterial, that as a printed publication it has not been noticed to the complainant; that the question is leading and suggestive that there have been other books previously published by this company.

A. Since 1901.

Q. 115. You may state what the fact may be as to whether or not the three-color company with which you were connected ever made any three-color pictures for the Osborne Company's Art Calendar, and if so, about when?

Objected to as immaterial.

A. The American Colortype Company, the concern with which I [318] was connected, furnished the plates for the Osborne Company for the printing of their Art Calendars in 1901, the Osborn Company being a part of the American Colortype Company.

(Testimony of Julius Regenstein.)

Q. 116. When or what year or years did you see the Osborne Company's Art Calendars, for which your firm furnished plates?

Objected to as incompetent and immaterial.

A. In 1901.

Q. 117. You may state what the fact may be as to whether the Osborne Company, for a number of years, has been getting out calendars similar in kind to the one that you have produced.

Same objection.

A. I believe the Osborne Company has published such calendars for the last fifteen years.

Q. 118. How did the colored pictures, in the other calendars which you have seen, published by the Osborne Company, compare with the pictures in this one, as to the use of a border, or the nonuse of a border, the covering up or non-covering up of the margins or edges, as shown in this particular book before us?

Same objection.

A. Such borders are used by the Osborne Company up to this date.

Q. 119. How generally has it been the practice in three-color printing, to use borders printed around the margin of three-color pictures, to cover up or conceal irregularities or objectionable appearances in the edges, due to imperfect registration or other causes?

Same objection.

A. It is the universal practice.

Q. 120. And for how long a time has such been the

(Testimony of Julius Regenstein.)

practice, to your personal knowledge? [319]

Same objection.

A. To my personal knowledge, it is the practice, so far as three-colored printing is concerned, for the last sixteen years, and, as far as color printing from plates, which are not three-color plates, is concerned, for the last twenty years.

Defendant's counsel offers in evidence the Osborne Art Calendar for 1900, produced by the witness, for the purpose of showing illustrations of both the objectionable appearance around the border or margin of three-color pictures, due to the overlapping of running of the colors, or other causes, and of the covering up and concealing of such objectionable appearances, by the printing of a border around the picture, with particular reference to the pictures shown opposite page 16 and on page 38 of such book, and asks to have the same marked "Defendant's Exhibit Osborne Art Calendar for 1900."

By Mr. TOWNSEND.—The receipt in evidence of the exhibit last offered is objected to as irrelevant, incompetent, and immaterial, and insufficient to show any prior art.

Q. 121. I notice in this book, on page 7, a cut numbered 4514, "Tales of Chivalry"; another cut on page 20, numbered 2024, "The Bride and the Fortune Teller"; and another cut, on page 32, numbered 2603, "A Florentine Girl"; which appear to have a gilt or golden colored border. What is that color termed in the art?

Objected to as immaterial.

(Testimony of Julius Regenstein.)

A. Gold border.

Q. 122. Is it printed on? A. It is.

Q. 123. What is the object of that printed gold border, such [320] as I have called your attention to? A. It is done to beautify the job.

Q. 124. In beautifying the job, what, if any effect, does it have on the concealing or covering up of imperfections or objections in the border of the picture?

Objected to as leading; also as incompetent and immaterial.

A. The gold band or border around the colored print is made deliberately wider, in order to cover up the bleeding of the three-color work, and the ornamental feature of the design beautifies the job.

Q. 125. I think you spoke yesterday of some cases where, through using a border too narrow, the imperfections in the edge or margin of the picture or other work, was not properly covered. I will ask you to look at this picture on page 23, "The Florentine Girl," and tell us whether it illustrates such careless or imperfect work.

A. The subject, "A Florentine Girl," illustrates distinctly careless plate-making. The mistake was made by the engravers, who made the oval gold plate.

Q. 126. I call your attention to the picture on page 8 of this book, numbered 4504, "A Connoisseur," and the plates on page 12, numbered 4113, "Knickerbocker Times," and numbered 4154, "An Old Road in Virginia—Sunset," and the plate on page 36, numbered 6024, "Under the Willows," not to mention other plates or pictures, and ask you whether they

(Testimony of Julius Regenstein.)

afford illustrations of objectionable edges or margins in the pictures, due to the overlapping or running of the colors, where, to save expense or for other causes, no border was printed on?

Objected to as incompetent and immaterial; also as leading and suggestive, and the assuming of something not apparent from the record. [321]

A. They do.

Q. 127. Do you know what the practice has been in the printing art, distinct from the three-color art particularly, as to the use of means of any kind for covering up or concealing objectionable edges or margins, in the work being done?

Objected to as irrelevant and immaterial.

A. To my knowledge, the printing of borders and tints over overlapping or bleeding colors, this fact has been known to me for the last twenty years, and is common, so far as all color printing on printing-presses is concerned, from printing plates; also color printing on lithographic presses, from stones, and other materials used.

Q. 128. If you have made any samples to illustrate the printing of borders in the printing art, as referred to in your last answer, please produce them?

This entire line of examination is objected to as irrelevant, incompetent, and immaterial; unless it be shown that this witness' experience was based on work in or work involving the manufacture of one-piece envelopes of substantially the character here in controversy.

A. The specimens which I hold in my hand were

(Testimony of Julius Regenstein.)

printed under my directions early this week.

Q. 129. What do these two samples that you have produced illustrate or represent?

Same objection.

A. These samples represent that, where an undersized paper is used, and the ink used is not sufficiently stiff, there is a likelihood that the edges of the print will appear unclean and ragged. In order to perfect the job, the printing of the border with stiff ink will do away with such imperfections.

Q. 130. How long, to your knowledge, has it been the practice [322] in the printing art, to print borders to cover up imperfections in the edges of the work, as shown in these samples that you have produced?

Same objection.

A. I have had such knowledge for the last twenty years.

Q. 131. What kind of paper or quality of paper was the printing done on, in these samples that you have produced?

A. The printing is done on an undersized paper, used by the "Saturday Evening Post" on its cover.

By Mr. BANNING.—Defendant's counsel offers in evidence the sample produced by the witness, to illustrate the use of borders in the printing art, and asks that the same be marked "Defendant's Exhibit Illustration of Printers' Border."

Q. 132. If you made a batch of your one-piece transparent window envelopes without a border around the window, what would a printer naturally

(Testimony of Julius Regenstein.)

do, in the exercise of his knowledge and skill in the printing art, to give a more finished or desirable appearance to the window, upon observing that the oil had run or crept into the paper around the margins or edges?

Objected to as leading; that no proper foundation has been laid; and as calling for the mere self-serving opinion or conclusion of the witness.

A. A printer would print opaque ink over such imperfections, and, if he was a carpenter, he very likely would nail a board over it.

Q. 133. In printing a border around the window, what, if anything, would he be doing different from or contrary to what he had been accustomed to do for the past twenty years, to your knowledge?

Objected to as no proper foundation laid; and that it calls for the self-serving opinion and conclusion of the [323] witness.

A. Any printer would print a border of opaque ink—the thing he always does when he wants to cover imperfections.

Q. 134. Is that a part of the knowledge and experience and expedience of the printers' art?

A. It is.

Q. 135. And has been, to your knowledge, for how many years?

Objected to as incompetent and immaterial.

A. To my knowledge, for twenty years.

Q. 136. You yesterday identified some old one-piece transparent window envelopes as having been made as early as January, 1904, which showed a

(Testimony of Julius Regenstein.)

border printed around the transparent windows. Why did you not apply for a patent on that border, or the window of the envelope provided with it, if you did not?

A. I did not apply for a patent, because it seemed to me ridiculous to ask for a patent on a thing or operation which I and others had done and made for years, and I felt, if I should come to you and the Patent Office for such a patent, that you would give me the laugh.

Q. 137. Did you see anything in what you had done in applying the border that you regarded as invention?

Objected to as irrelevant and immaterial; as leading, and calling for the mere self-serving opinion and conclusion of the witness. I move that the answer to Q. 136 be struck out, as being the self-serving afterthought and conclusion of the witness.

A. I did not, since I had done the same thing which I was doing right along.

Q. 138. When you saw that the oil ran or bled, into the paper, how long did it take you to know what to do to remove the difficulty? [324]

Same objection.

A. The time is so short that I cannot state the same, since it was simply a thought.

Q. 139. Did you do anything more than apply the knowledge you had of the printing art, to the situation?

Same objection.

A. I did not.

(Testimony of Julius Regenstein.)

Q. 140. I notice that the claim of the first Cohn patent, by which I mean the patent first applied for, says that the envelope called for has "an unpunctured face," and that the envelope is made of "relatively opaque stock." How is it with these old envelopes that have been identified by you as made in January, 1904?

A. The envelopes made in 1904 have an unpunctured face and are made of relatively opaque stock.

Q. 141. Please read the claim of this first Cohn patent, and see whether or not it is applicable to and readable upon these old January, 1904, envelopes?

The question is objected to as leading; no proper foundation laid; and calls for the legal conclusion and the self-serving opinion of the witness.

A. I have read the claim. This claim is correct, as far as the envelopes are concerned which were manufactured in January, 1904.

Q. 142. How far, if at all, has your business for, say, the last twenty years, brought you in contact with printers and the printing art generally?

Objected to as irrelevant and immaterial, unless it is shown that the witness' experience included the manufacture of envelopes similar or analogous to these here in question.

A. For four years my business was the business of a photo-engraver, making all kinds of printing plates. In addition [325] to this business, I, in 1894, went into the business of making and printing three-color plates. Three gentlemen and myself

(Testimony of Julius Regenstein.)

started this art of three-color printing in this country in 1894. I supervised and criticised the work and was considered one of the foremost critics and experts on fine plate printing. Since 1905, I am actively engaged in the printing and manufacturing of envelopes, and late in 1903 and in 1904, in connection with my business as a color-printer, I manufactured and experimented in the matter of Transo envelopes.

Q. 143. Did these various businesses bring you in contact with printers and printers' art, so that you became acquainted with methods and practices of the same?

Same objection.

A. They did.

Recess.

Q. 144. In the printing of your one-piece transparent window envelopes, does the application of the border prevent the creeping or running of the oil, or simply cover up such creeping, as far as the border extends?

A. The existence of the border does not prevent the creeping, and in many cases the oil will creep over or further than the border is indicated.

Q. 145. Can you produce sheets of your paper or portions of sheets illustrating the blanks before the paper is cut to form the envelopes, which will show the printing of the tints, borders, etc., and this bleeding of the oil beyond the margin of the border, that you have mentioned? A. I can.

Q. 146. Is this sheet which you have handed me

(Testimony of Julius Regenstein.)

one such sheet as referred to in the last question and answer? A. Yes, sir. [326]

By Mr. BANNING.—Defendant's counsel offers in evidence a portion of the sheet produced by the witness, and asks that the same be marked "Defendant's Exhibit Printed Sheet."

Direct examination closed.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 147. When you stated, Mr. Regenstein, in answer to Q. 142, that since 1905 you have been actively engaged in the printing and manufacturing of envelopes, I suppose you mean the printing and manufacturing of the Transo envelopes here in issue?

A. I do.

XQ. 148. Do you recall when you first put out an envelope commercially on the market with the printed border in the outline of a pickle, like the Heinze envelope, associated with printed matter; or any other sort of a border characteristic of a symbol of trade, like a star or anything to represent the trademark or trade name? A. I do remember.

XQ. 149. When was that?

A. It was either in 1908 or 1909.

XQ. 150. What were the specific instances you have in mind?

A. I have in mind the envelopes on which our regular border was changed to the shape of a pickle.

XQ. 151. That is, the envelope of the present defendant? A. Yes, sir.

XQ. 152. Have you utilized that advertising idea

(Testimony of Julius Regenstein.)

in other instances or with other firms; and if so, state those specific cases?

A. We have, either in 1909 or 1910, printed envelopes where the regular border was changed to the shape of a cigar.

XQ. 153. For whom was that work done? [327]

A. I am unable to state the name at this time; it was done for a concern in St. Louis.

XQ. 154. I show you an envelope and ask if that is the one you referred to in your last answer?

A. That is the envelope I referred to in my last answer.

XQ. 155. This envelope you looked at is one of your own envelopes, is it not? A. It is.

I offer this envelope, last referred to, in evidence, and ask that it be marked by the notary, as "Complainant's Exhibit 'E,' Stickney Cigar Envelope," for identification.

XQ. 156. Will you state why, in getting up these envelopes for the Heinz Company, represented by Complainant's Exhibit "C" and the "Stickney Company Envelope, Exhibit 'E,'" so marked for identification, just why you used the particular form or borders therein shown, and not some other shape or outline of border?

A. I presume that the respective parties had asked us whether we could change our regular border to the shape of a pickle or cigar, respectively, and we very likely told them that we could.

XQ. 157. Do you think that that was the real reason? A. I do.

(Testimony of Julius Regenstein.)

XQ. 158. Do you think that that was the only reason for making the change? I mean your only reason for making the change?

A. It was our only reason.

XQ. 159. What was the reason of your imprinting the word "Heinz" on the envelope, so that when held up to you as I am holding it up to you now, with the face of the envelope towards you, the word "Heinz" appears in association with the outline of a pickle? [328]

A. The trademark of the Heinz Company represents a pickle, which shows the word "Heinz" on the pickle. The only way Heinz would accept the envelope was to show the word "Heinz" the same as appears on the trademark. It is impractical to print the word "Heinz" on the transparency, as it would interfere with the clearness of the window, and the only way to bring it out is to print it on the inside of the bottom flap.

XQ. 160. So that, in effect, the word "Heinz" shows through the window? A. Yes.

XQ. 161. I will ask you the same question as XQ. 159, in regard to the Stickney envelope, and the reason for printing the words "Stickney's Fine Segars" on the envelope, so that it appears as if printed on the face of the envelope, associated with the outline of a cigar?

A. I do not know why Stickney had us print this label on the inside of the flap. I presume he saw that we printed the inside of the flap for Heinz and he no

(Testimony of Julius Regenstein.)

doubt wanted the same thing, since there is no special charge made.

XQ. 162. Do you know what your own reasons were for printing it so?

A. Our reason no doubt was because Stickney asked us to do it.

XQ. 163. You could just as easily have printed those words or the words "Stick to Stickneys" just above or just below the outline of the cigar on the opaque portion of the envelope, could you not?

A. We could if Stickney had asked us to.

XQ. 164. And that would probably have identified the Stickney cigar just as well as the way in which you printed it, would it not?

A. I don't know anything about that.

XQ. 165. Did you solicit this order of envelopes from the [329] Heinz company, or did it come to you voluntarily, and initiate with the Heinz company?

A. We send out a great many sample envelopes to the various concerns, and I do not remember at this time how this transaction came about.

XQ. 166. What is your best recollection as to this?

A. My best recollection is that the Heinz people asked us for prices, and asked whether we could change our usual ring to the shape of a pickle.

XQ. 167. What did you do then?

A. As I stated before, we told them that for a special consideration such change could be made.

XQ. 168. What were the circumstances in connection with the Stickney order?

(Testimony of Julius Regenstein.)

A. The Stickney order is still in my mind, as it is more recent, and I believe that our St. Louis salesman showed a Heinz envelope to Stickney, and that he suggested the changing of the regular border to a cigar. I am not positively sure of this point, as it is possible that when Stickney saw the Heinz envelope that he said to our agent to give him in place of a pickle a cigar.

XQ. 169. The last portion of your answer though, is merely a surmise?

A. Yes. I remember that the Stickney proposition was submitted to us by our agent.

XQ. 170. Are these the only two instances of advertising envelopes of this character that you have?

A. They are the only two I can remember.

XQ. 171. What has been the general comment with regard to the two envelopes—the Stickney and Heinz—as to the get up and artisticness and effectiveness? A. They are very much admired. [330]

XQ. 172. Recognized as something new?

A. Probably.

XQ. 173. Admired by the trade, or particularly by the customers?

A. To my personal knowledge, the greatest admiration came from my part. We do not care for this kind of business. It does not fit into our manner of manufacture, and is therefore not profitable.

XQ. 174. How doesn't it fit into your line of business?

A. According to the manner our paper is printed, it is necessary to remove, before such envelopes are

(Testimony of Julius Regenstein.)

printed, our regular plate, and the time consumed in making this change on our fast running machine means a great deal more to us than the additional price, and that is particularly so in the case of the Stickney cigar, where we are obliged to not only change our plates but we must also clean our press on account of the brown ink which is used, where we invariably use, with but few exceptions, nothing but green ink.

XQ. 175. Do you recall whether you submitted specimens or drawings of a proposed envelope to the Heinz Company before you got their order?

A. I do not.

XQ. 176. Prior to getting up the Heinz envelope, showing the window with the surrounding pickle outline, had you ever seen any other transparent envelope, showing or embodying the same idea?

A. I remember that either late in 1905 or 1906 a Mr. Cohn of San Francisco sent to me what I really believe were parts of an envelope, I think it was the face only, which showed in one case the design of a cigar in which the transparent window absolutely followed the shape of a cigar. I also believe that the same party submitted a part of an envelope which represented a box of cascadelets, where the window took the same shape as the box of cascadelets, but I am positive that [331] neither one of the jobs were printed on a printing-press. According to my recollection the pictures were color sketches made by artists on the paper, and the transparency was simply indicated by the use of some fat, butter, or some-

(Testimony of Julius Regenstein.)

thing similar. I received at that time a letter from Mr. Cohn, in which I think he said that he either had a patent on this design feature or had applied for a patent, and it was his idea that we ought to come together in some way in a proposition pertaining to the design feature. I remember well that I turned this matter down, and believe I told Mr. Cohn that his idea was absolutely impossible and impractical. I believe that after awhile, in some way, I got a hold of Mr. Cohn's second patent, and I saw by the patent drawing that a pickle was illustrated.

XQ. 177. The Mr. Cohn you refer to is the complainant herein, is he not? A. I believe so.

XQ. 178. And the second patent referred to is the patent No. 824,908, is it not?

A. I referred to the same patent which in my previous testimony was referred to as the second Cohn patent.

XQ. 179. In 1905 or 1906, when you received those specimens from Mr. Cohn, did you also receive a specimen from Mr. Cohn, showing the outline of a pickle or cucumber?

A. I cannot remember at this time. I can only remember the cigar and the box, but it is possible that there was a cucumber among those samples.

XQ. 180. Was that the first correspondence you ever had with Mr. Cohn with respect to the inventions and patents here in suit?

A. According to my recollection, that is the first time I [332] ever heard of Cohn.

XQ. 181. In getting up the Heinz envelope with

(Testimony of Julius Regenstein.)

the pickle outline, why didn't you adopt some other design, like that of a cascaret, or a cigar?

A. I stated in my testimony that I believe the pickle design was made and suggested by Heinz, and I hardly believe that I could put Heinz in the Cascaret business.

XQ. 182. The picture of a cascaret outline, with the name of a drug manufacturer, would not very well serve to advertise the goods or business of Heinz, would it? A. I would not think so.

XQ. 183. But such a design would be a pretty good advertisement for a cascaret company, don't you think? A. I am unable to state that.

XQ. 184. What is your belief in regard to that, in view of your experience, from the manufacture and use by your customers, the Heinz company and the Stickney company, of their envelopes?

A. In regard to the Heinz and Stickney envelopes, I wish to state that I do not remember a single instance where another customer came to us and asked us to give him something similar or something to advertise his business by the use of symbols of trade, etc.

XQ. 185. What did you mean then in answer to XQ. 171, when you said that the Stickney and Heinz envelopes are very much admired?

A. They were very much admired by myself, and the few other people who saw them, but nobody wants to buy them.